Managing Diversity in the Workplace (Buch)

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Unit 1: Diversity Theories, Legislation, and Cultural Competence

Chapter 1: Introduction and Theories

1.1: Introduction

1.

Figure 1.1.1: (Credit: rawpixel/ Pixabay/ (CC BY 0))

Learning Objectives

After reading this chapter, you should be able to answer these questions:

- What is diversity?
- How diverse is the workforce?
- How does diversity impact companies and the workforce?
- What is workplace discrimination, and how does it affect different social identity groups?
- What key theories help managers understand the benefits and challenges of managing the diverse workforce?
- How can managers reap benefits from diversity and mitigate its challenges?
- What can organizations do to ensure applicants, employees, and customers from all backgrounds are valued?

EXPLORING MANAGERIAL CAREERS

Dr. Tamara A. Johnson, Assistant Chancellor for Equity, Diversity, and Inclusion at University of Wisconsin-Eau Claire

Dr. Tamara Johnson's role as assistant chancellor for equity, diversity, and inclusion at the University of Wisconsin-Eau Claire involves supervising and collaborating with various campus entities to ensure their operations continue to support the university's initiatives to foster diversity and equity within the university community. Dr. Johnson oversees the Affirmative Action, Blugold Beginnings (pre-college program), Gender and Sexuality Resource Center, Office of Multicultural Affairs, Ronald E. McNair Program, Services for Students with Disabilities, Student Support Services, University Police, and Upward Bound units and leads campus-wide initiatives to educate and train faculty, students, and staff about cultural awareness, diversity, and institutional equity.

Dr. Johnson's journey to her current role began more than 20 years ago when she worked as a counselor for the Office of Multicultural Student Affairs at the University of Illinois. Her role in this office launched her on a path through university service—Dr. Johnson went on to work as the associate director for University Career Services at Illinois State University, the director for multicultural student affairs at Northwestern University, and the director for faculty diversity initiatives at the University of Chicago. As faculty at the Chicago School of Professional Psychology, Argosy University, and Northwestern University, Dr. Johnson taught counseling courses at the undergraduate, master's, and doctorate levels.

Dr. Johnson's work at the University of Wisconsin-Eau Claire involves developing a program and protocols to ensure all faculty and staff across the institution receive baseline diversity training. In addition, one of her goals is to include criteria related to diversity factors in the evaluations of all faculty/staff. A primary issue that she seeks to address is to increase the awareness of the challenges experienced by underrepresented students. This includes individuals who may come from backgrounds of low income, students of color, first-generation students, and other marginalized groups such as lesbian, gay, bisexual, and transgender students. Dr. Johnson understands the importance of creating initiatives to support individuals in those groups so their specific concerns may be addressed in multiple ways. As you will learn in this chapter, when leaders proactively create an inclusive and supportive climate that values diversity, benefits are produced that result in positive outcomes for organizations.

1.2: An Introduction to Workplace Diversity

1.

1. What is diversity?

Diversity refers to identity-based differences among and between two or more people that affect their lives as applicants, employees, and customers. These identity-based differences include such things as race and ethnicity, gender, sexual orientation, and age. Groups in society based on these individual differences are referred to as **identity groups**. These differences are related to discrimination and disparities between groups in areas such as education, housing, healthcare, and employment. The term **managing diversity** is commonly used to refer to ways in which organizations seek to ensure that members of diverse groups are valued and treated fairly within organizations in all areas including hiring, compensation, performance evaluation, and customer service activities. The term *valuing diversity* is often used to reflect ways in which organizations show appreciation for diversity among job applicants, employees, and customers. **Inclusion**, which represents the degree to which employees are accepted and treated fairly by their organization, is one way in which companies demonstrate how they value diversity. In the context of today's rapidly changing organizational environment, it is more important than ever to understand diversity in organizational contexts and make progressive strides toward a more inclusive, equitable, and representative workforce.

Three kinds of diversity exist in the workplace (see Table 1.2). **Surface-level diversity** represents an individual's visible characteristics, including, but not limited to, age, body size, visible disabilities, race, or sex. A collective of individuals who share these characteristics is known as an identity group. **Deep-level diversity** includes traits that are non-observable such as attitudes, values, and beliefs. **Hidden diversity** includes traits that are deep-level but may be concealed or revealed at the discretion of individuals who possess them. These hidden traits are called **invisible social identities** and may include sexual orientation, a hidden disability (such as a mental illness or chronic disease), mixed racial heritage, or socioeconomic status. Researchers investigate these different types of diversity in order to understand how diversity may benefit or hinder organizational outcomes.

Diversity presents challenges that may include managing dysfunctional conflict that can arise from inappropriate interactions between individuals from different groups. Diversity also presents advantages such as broader perspectives and viewpoints. Knowledge about how to manage diversity helps managers mitigate some of its challenges and reap some of its benefits.

Types of Diversity	
Surface-level diversity	Diversity in the form of characteristics of individuals that are readily visible including, but not limited to, age, body size, visible disabilities, race or sex.
Deep-level diversity	Diversity in characteristics that are non-observable such as attitudes, values, and beliefs, such as religion.

Types of Diversity	
Hidden diversity	Diversity in characteristics that are deep-level but may be concealed or revealed at discretion by individuals who possess them, such as sexual orientation.

Table 1.2 (Attribution: Copyright Rice University, OpenStax, under CC-BY 4.0 license)

CONCEPT CHECK

1. What is diversity?
2. What are the three types of diversity encountered in the workplace?

1.3: Diversity and the Workforce

1.

2. How diverse is the workforce?

In 1997, researchers estimated that by the year 2020, 14% of the workforce would be Latino, 11% Black, and 6% Asian. Because of an increase in the number of racial minorities entering the workforce over the past 20 years, most of those projections have been surpassed as of 2016, with a workforce composition of 17% Hispanic or Latino of any race, followed by 12% Black and 6% Asian (see Figure 1.3.1). American Indians, Alaska Natives, Native Hawaiians, and Other Pacific Islanders together made up a little over 1% of the labor force, while people of two or more races made up about 2% of the labor force. Women constitute approximately 47% of the workforce compared to approximately 53% for men, and the average age of individuals participating in the labor force has also increased because more employees retire at a later age. Although White people still predominantly make up the workforce with a 78% share, the U.S. workforce is becoming increasingly more diverse, a trend that presents both opportunities and challenges. These demographic shifts in the labor market affect the workforce in a number of ways due to an increasing variety of workers who differ by sex, race, age, sexual orientation, disability status, and immigrant status.

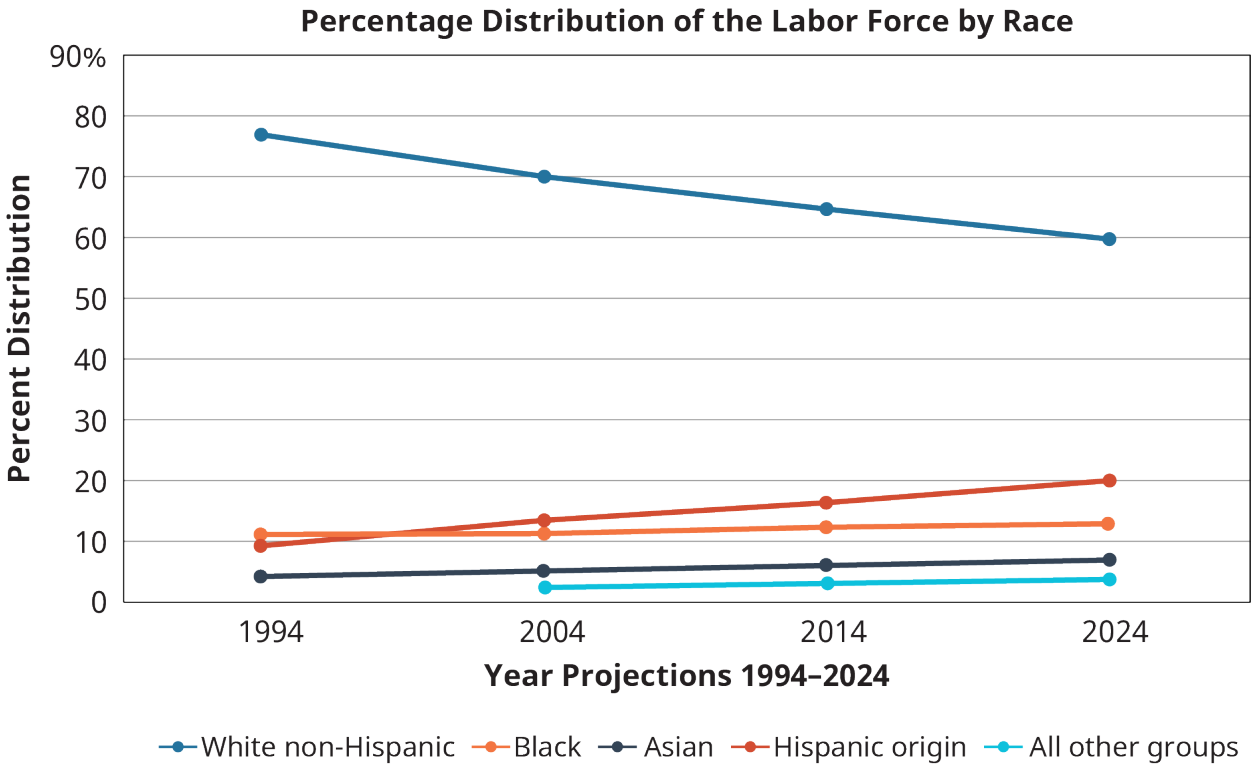

Figure 1.3.1: Percentage distribution of the labor force by race (Attribution: Copyright Rice University, OpenStax, under CC-BY 4.0 license)

Gender

Increasingly more women are entering the workforce. Compared to 59% in 1977, the labor force participation rate for men is now approximately 53% and is expected to decrease through 2024 to 52%. As the labor force participation rate decreases for men, the labor force growth rate for women will be faster. Their percentage of the workforce has steadily risen, as can be seen in Figure 1.3.2, which compares the percentage of the workforce by gender in 1977 to 2017.

Although more women are entering the labor force and earning bachelor's degrees at a higher rate than men, women still face a number of challenges at work. The lack of advancement opportunities awarded to qualified women is an example of a major challenge that women face called the **glass ceiling**, which is an invisible barrier based on the prejudicial beliefs that underlie organizational decisions that prevent women from moving beyond certain levels within a company. Additionally, in organizations in which the upper-level managers and decision-makers are predominantly men, women are less likely to find mentors, which are instrumental for networking and learning about career opportunities. Organizations can mitigate this challenge by providing mentors for all new employees. Such a policy would help create a more equal playing field for all employees as they learn to orient themselves and navigate within the organization.

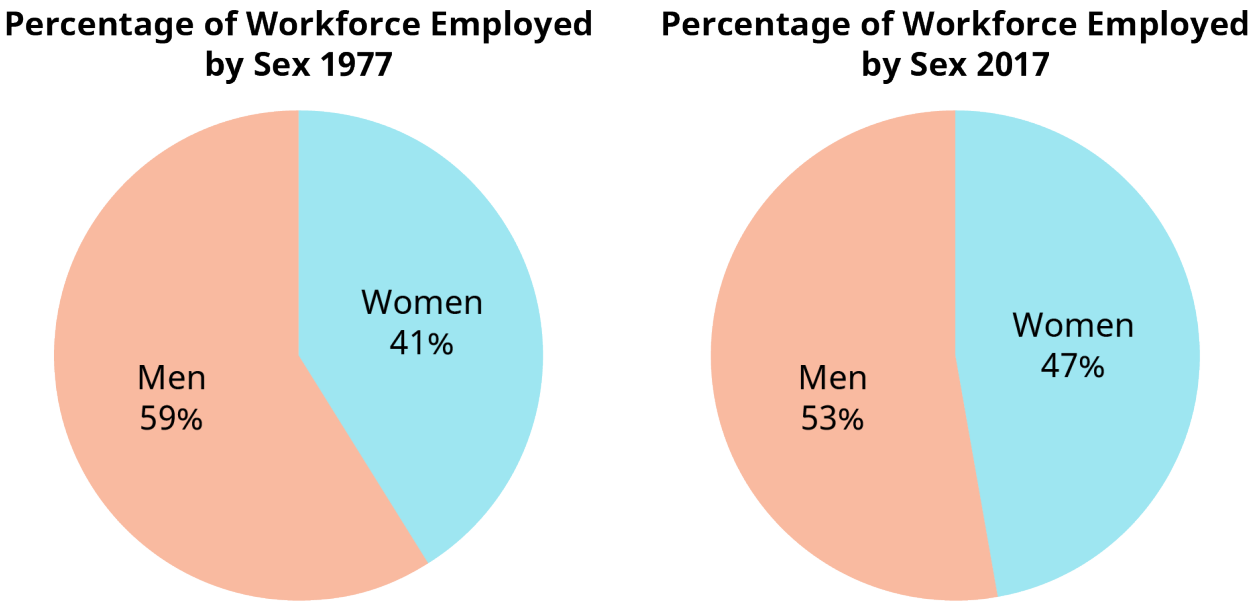

Figure 1.3.2: Percentage Distribution of the Labor Force by Sex (Attribution: Copyright Rice University, OpenStax, under CC-BY 4.0 license)

One factor that greatly affects women in organizations is **sexual harassment**. Sexual harassment is illegal, and workers are protected from it by federal legislation. Two forms of sexual harassment that can occur at work are quid pro quo and hostile environment. Quid pro quo harassment refers to the exchange of rewards for sexual favors or punishments for refusal to grant sexual favors. Harassment that creates a hostile environment refers to behaviors that create an abusive work climate. If employees are penalized (for example by being demoted or transferred to another department) for refusing to respond to repeated sexual advances, quid pro quo sexual harassment has taken place. The telling of lewd jokes, the posting of pornographic

material at work, or making offensive comments about women in general are examples of actions that are considered to create a hostile work environment. According to the Equal Employment Opportunity Commission, sexual harassment is defined as the "unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature. Harassment can also include offensive remarks about a person's sex." Although both men and women can be sexually harassed, women are sexually harassed at work more often. In addition, Black and other minority women are especially likely to be subjected to sexual discrimination and harassment.

Figure 1.3.3: The treatment of women in business has become a hot topic in corporate boardrooms, human resources departments, and investment committees. Tamara Johnson, who is profiled in the opening feature to this chapter, moves beyond simply acknowledging widespread discrimination to focusing on solutions. Also on the agenda: the need to improve diversity and inclusion across the board and breaking through the glass ceiling. (Credit: Tamara Johnson/ Attribution 2.0 Generic (CC BY 2.0))

It is in the organization's best interest to prevent sexual harassment from occurring. Ways to do this include companies providing ongoing (e.g., annual) training so that employees are able to recognize sexual harassment. Employees should know what constitutes acceptable and unacceptable behavior and what channels and protocols are in place for reporting unacceptable behaviors. Managers should understand their role and responsibilities regarding harassment prevention, and a clear and understandable policy should be communicated throughout the organization.

Just as gender-based discrimination is illegal and inappropriate, so is discrimination or mistreatment based on pregnancy, childbirth, or related medical conditions. While organizations may have different policies regarding maternity and paternity leave, they must comply with both the Pregnancy Discrimination Act and the Family Medical Leave Act.

Race

Another important demographic shift in workforce diversity is the distribution of race. (Note that we are using categories defined by the U.S. Census Bureau. It uses the term "Black (African American)" to categorize U.S. residents. In this chapter, we use the term "Black.")

While the White non-Hispanic share of the workforce continues to shrink, the share of racial and ethnic minority groups will continue to grow. Specifically, Hispanic people and Asian people will grow at a faster rate than other racial minorities, and Hispanic people are projected to make up almost one-fifth of the labor force by 2024. The projected changes in labor force composition between 2014 and 2024 are as follows:

White non-Hispanic participation in the labor force will decline by 3%. Other groups' share of the labor force is expected to increase: Black (10.1%), Hispanic/Latino (28%), Asian (23.2%), and Other groups (i.e., multiracial, American Indian, Alaska Native, Native Hawaiian, and Other Pacific Islanders) labor force share is expected to increase by 22.2%. With the workforce changing, managers will need to be mindful of issues employees encounter that are uniquely tied to their experiences based on race and ethnicity, including harassment, discrimination, stereotyping, and differential treatment by coworkers and decision-makers in organizations.

Discrimination Against Black Employees

Race is one of the most frequent grounds for discrimination. Although Black people do not make up the largest share of the workforce for racial minorities, research studies show they face discrimination more often than other racial minorities. As a matter of fact, some experts believe that hiring discrimination against Black people has not declined over the past 25 years while workplace discrimination against other racial minority groups has declined.

ETHICS IN PRACTICE

Discrimination in the Sharing Economy—#AirbnbWhileBlack

Airbnb, a popular home-sharing website founded in San Francisco in 2008, offers millions of homes for short-term rental in more than 190 countries. This company has revolutionized the sharing economy in the same way that ride-sharing services such as Uber and Lyft have, and according to the company, the site's drive to connect hosts and potential renters has been able to contribute to the quality of life of both homeowners and travelers. According to Airbnb's press releases and information campaigns, their services can reduce housing costs for travelers on a budget and can provide unique experiences for adventurous travelers who wish to have the flexibility to experience a city like a local. The organization also claims that most of its users are homeowners looking to supplement their incomes by renting out rooms in their homes or by

occasionally renting out their whole homes. According to a statement, most of the listings on the site are rented out fewer than 50 nights per year.

Despite the carefully crafted messages Airbnb has presented to the public, in 2016 the company came under intense scrutiny when independent analyses by researchers and journalists revealed something startling: While some Airbnb hosts did in fact use the services only occasionally, a significant number of hosts were using the services as though they were hotels. These hosts purchased a large number of properties and continuously rented them, a practice that affected the availability of affordable housing in cities and, because these hosts were not officially registered as hoteliers, made it possible for Airbnb hosts to avoid paying the taxes and abiding by the laws that hotels are subject to.

Title II of the Civil Rights Act of 1964 mandates that hotels and other public accommodations must not discriminate based on race, national origin, sex, or religion, and Title VIII of the Civil Rights Act of 1968 (also known as the Fair Housing Act [FHA]) prohibits discrimination specifically in housing. However, Airbnb's unique structure allows it to circumvent those laws. The company also claims that while it encourages hosts to comply with local and federal laws, it is absolved from responsibility if any of its hosts break these laws. In 2017, researcher Ben Edelman conducted a field experiment and found that Airbnb users looking to rent homes were 16% less likely to have their requests to book accepted if they had traditionally African American sounding names like Tamika, Darnell, and Rasheed.

These findings, coupled with a viral social media campaign, #AirbnbWhileBlack, in which users claimed they were denied housing requests based on their race, prompted the state of California's Department of Fair Employment and Housing (DFEH) to file a complaint against the company. In an effort to resolve the complaint, Airbnb reported banning any hosts who were found to have engaged in discriminatory practices, and they hired former U.S. Attorney General Eric Holder and former ACLU official Laura Murphy to investigate any claims of discrimination within the company. In 2016, Airbnb released a statement outlining changes to company practices and policies to combat discrimination, and while they initially resisted demands by the DFEH to conduct an audit of their practices, the company eventually agreed to an audit of roughly 6,000 of the hosts in California who have the highest volume of properties listed on the site.

Sources: AirBnB Press Room, accessed December 24, 2018, https://press.atairbnb.com/about-us/; "Airbnb's data shows that Airbnb helps the middle class. But does it?", *The Guardian*, accessed December 23, 2018, https://www.theguardian.com/technolo...vention-survey ; and Quittner, Jeremy, "Airbnb and Discrimination: Why It's All So Confusing", *Fortune*, June 23, 2016, http://fortune.com/2016/06/23/airbnb...mination-laws/.

Discussion Questions

1. What are some efforts companies in the sharing economy can take before problems of discrimination threaten to disrupt operations?
2. Should Airbnb be held responsible for discriminatory actions of its hosts?

Currently, White men have higher participation rates in the workforce than do Black men, and Black women have slightly higher participation rates than White women. Despite growth and gains in both Black education and Black employment, a Black person is considerably more likely to be unemployed than a White person, even when the White person has a lower level of education or a criminal record.

Black people frequently experience discrimination in the workplace in spite of extensive legislation in place to prohibit such discrimination. Research has shown that stereotypes and prejudices about Black people can cause them to be denied the opportunity for employment when compared to equally qualified White people. It is estimated that about 25% of businesses have no minority workers and another 25% have less than 10% minority workers. In terms of employed Black people, research has shown that, regardless of managers' race, managers tended to give significantly higher performance ratings to employees who were racially similar to them. Because White people are much more likely to be managers than Black people, this similarity effect tends to advantage White employees over Black employees. Black people are also significantly more likely to be hired in positions that require low skills, offer little to no room for growth, and pay less. These negative employment experiences affect both the mental and physical health of Black employees.

Hispanic/Latino

Hispanic people are the second-fastest-growing minority group in the United States behind Asian people, and they make up 17% of the labor force. Despite this and the fact that Hispanic people have the highest labor participation rate of all the minority groups, they still face discrimination and harassment in similar ways to other minority groups. (Note that we are again using the categories as defined by the U.S. Census Bureau, which predominantly uses the term "Hispanic" to refer to people of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin.)

Hispanic people can be of any race. As a matter of fact, increasingly more Hispanic people are identifying racially as White. In 2004 almost half of Hispanic people identified themselves racially as White, while just under half identified themselves as "some other race." More than 10 years later, approximately 66% of Hispanic people now identify themselves racially as White while only 26% identify themselves as "some other race." The remaining Hispanic population, totaling approximately 7%, identify as either Black, American Indian, Asian, Alaskan Native, Pacific Islander, or Native Hawaiian.

Why would a minority identity group identify racially as White? A Pew study found that the longer Hispanic families lived in the United States, the more likely they were to claim White as their race even if they had not done so in the past. This suggests that upward mobility in America may be perceived by some Hispanic people to be equated with "Whiteness." Consequently, Hispanic people who self-identify racially as White experience higher rates of education and salary, and lower rates of unemployment. Additionally, only 29% of Hispanic people polled by the Pew Hispanic Center believe they share a common culture. According to the Pew Research Center, this finding may be due to the fact that the Hispanic ethnic group in the United States is made up of at least 14 Hispanic origin groups (such as Puerto Rican, Cuban, Spanish, Mexican,

Dominican, and Guatemalan, among many others). Each of these groups has its own culture with different customs, values, and norms.

These cultural differences among the various Hispanic groups, combined with different self-perceptions of race, may also affect attitudes toward their workplace environment. For example, one study found that the absenteeism rate among Black people was related to the level of diversity policies and activities visible in the organization, while the absenteeism rate among Hispanic people was similar to that of White people and not related to those diversity cues. Results from this study suggest that managers need to be aware of how diversity impacts their workplace, namely addressing the relationship between Hispanic job seekers or workers and organizational outcomes concerning diversity policies as it may differ from that of other racial minorities.

Asian and Asian American

Asian people are the fastest-growing ethnic group in the United States, growing 72% between 2000 and 2015. Compared to the rest of the U.S. population overall, households headed by Asian Americans earn more money and are more likely to have household members who hold a bachelor's degree. However, there is a wide range of income levels among the Asian population that differs between the more than 19 groups of Asian origin in the United States.

Similar to other racial and ethnic minority groups, Asian people are stereotyped and face discrimination at work. Society through media often stereotypes Asian men as having limited English-speaking skills and as being highly educated, affluent, analytical, and good at math and science. Asian women are often portrayed as weak and docile. For Asian women, and other minority women as well, social stereotypes depicting them as exotic contribute to reports of sexual harassment from women minority groups.

The **model minority myth** is a reflection of perceptions targeting Asian people and Asian Americans that contrast the stereotypes of "conformity" and "success" of Asian men with stereotypes of "rebelliousness" and "laziness" of other minority men. It also contrasts the stereotyped "exotic" and "obedient" nature of Asian women against the stereotypical beliefs that White women are "independent" and "pure." These perceptions are used not only to invalidate injustice that occurs among other racial minorities, but also to create barriers for Asian and Asian Americans seeking leadership opportunities as they are steered toward "behind the scenes" positions that require less engagement with others. These stereotypes also relegate Asian women into submissive roles in organizations, making it challenging for Asian men and women to advance in rank at the same rate as White male employees.

Multiracial

Although the U.S. Census Bureau estimates that approximately 2% of the U.S. population describes themselves as belonging to more than one race, the Pew Research Center estimates that number should be higher, with around 7% of the U.S. population considered multiracial. This is due to the fact that some individuals may claim one race for themselves even though they have parents from different racial backgrounds. To complicate matters even more, when collecting

data from multiracial group members, racial identity for individuals in this group may change over time because race is a social construct that is not necessarily based on a shared culture or country of origin in the same way as ethnicity. As a result, multiracial individuals (and Hispanic people) have admitted to changing their racial identity over the course of their life and even based on the situation. Approximately 30% of multiracial individuals polled by the Pew Research Center say that they have varied between viewing themselves as belonging to one race or belonging to multiple races. Within the group polled, the order in which they first racially identified as belonging to one racial group versus belonging to more than one group varied.

Despite the fact that multiracial births have risen tenfold between 1970 and 2013, their participation in the labor force is only around 2%. Additionally, multiracial individuals with a White racial background are still considered a racial minority unless they identify themselves solely as White, and approximately 56% of them on average say they have been subjected to racial jokes and slurs. Discrimination also varies when multiracial groups are broken down further, with Black–American Indians having the highest percentage of individuals reporting discrimination and White–Asian people having the lowest percentage.

At work, multiracial employees are sometimes mistaken for races other than their own. If their racial minority background is visible to others, they may experience negative differential treatment. Sometimes they are not identified as having a racial or ethnic minority background and are privy to disparaging comments from unsuspecting coworkers about their own race, which can be demoralizing and can lead to lower organizational attachment and emotional strain related to concealing their identity.

Other Groups

Approximately 1% of the labor force identifies as American Indian, Alaska Native, Native Hawaiian or Pacific Islander, or some other race.

Age

The age distribution of an organization’s workforce is an important dimension of workplace diversity as the working population gets older. Some primary factors contributing to an older population include the aging of the large Baby Boomer generation (people born between 1946 and 1964), lower birth rates, and longer life expectancies due to advances in medical technology and access to health care. As a result, many individuals work past the traditional age of retirement (65 years old) and work more years than previous generations in order to maintain their cost of living.

Figure 1.3.4 compares the percentage of the population over the age of 65 to those under the age of 18 between 2010 and 2016. The number of older individuals has increased and is projected to reach 20.6% by the year 2030 while the number of younger individuals has steadily decreased within that time period. These numbers imply that organizations will increasingly have employees across a wide range of ages, and cross-generational interaction can be difficult to manage. Although older workers are viewed as agreeable and comfortable to work with, they are also stereotyped by some employees as incompetent and less interested in learning new tasks at

work compared to younger workers. Studies have found support for the proposition that age negatively relates to cognitive functioning. However, if managers offer less opportunity to older workers solely because of declining cognitive functioning, it can be detrimental to organizational performance because older workers outperform younger workers on a number of other job performance measures. Compared to younger workers, older workers are more likely to perform above their job expectations and follow safety protocols. They are also less likely to be tardy, absent, or abuse drugs or alcohol at work compared to their younger counterparts.

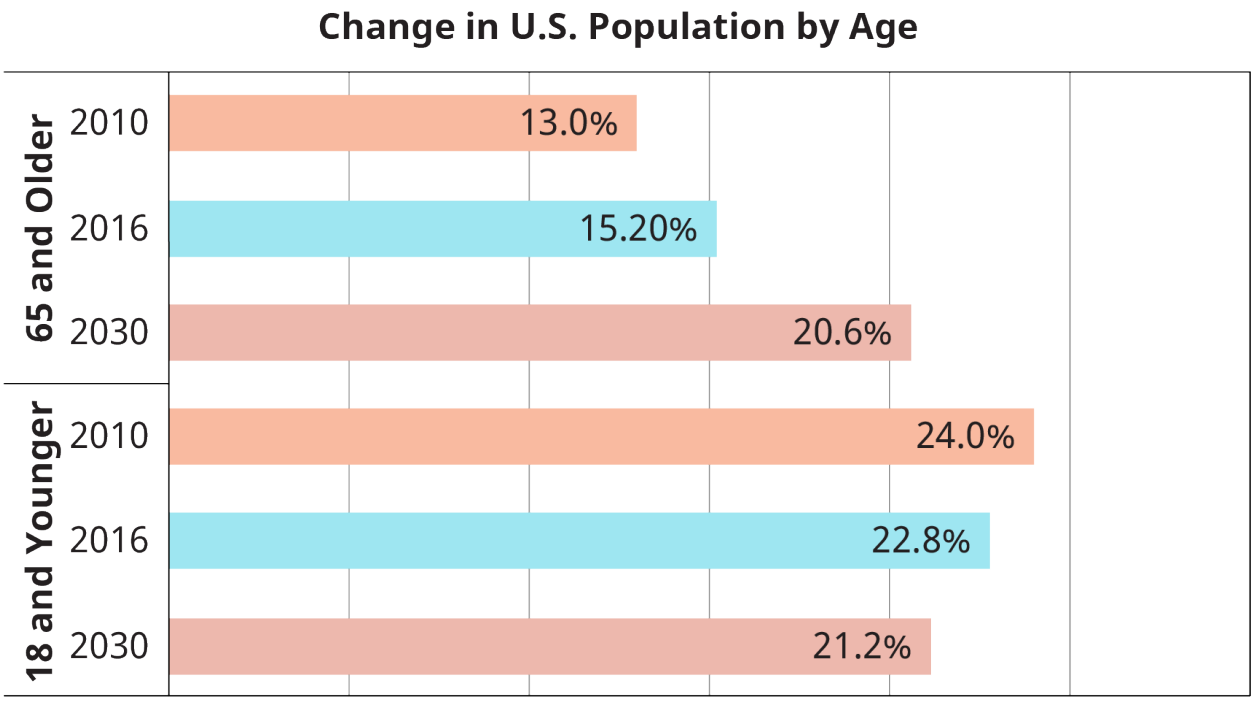

Figure 1.3.4: Change in U.S. population by age (Attribution: Copyright Rice University, OpenStax, under CC-BY 4.0 license)

Sexual Orientation and Gender Identity

Sexual orientation diversity is increasing in the workforce. In June 2020, the Supreme Court ruled that the Civil Rights Act prohibits discrimination based on sexual orientation and gender identity. Until this ruling, only 21 states and Washington D.C. prohibited such discrimination. With this new federal protection, individuals cannot for employment or fired for their sexual orientation, gender identity, or gender expression. However, although the Civil Rights Act does not provide federal protection to lesbian, gay, bisexual and transgender, and queer/questioning (LGBTQ) employees, that protection is not complete. LGBTQ people can still face other types of discrimination inside and outside of the workplace, and some employers and lawmakers may take up the issue in the future. On a positive note, more than half of the Fortune 500 companies have corporate policies that protect sexual minorities from discrimination at work and offer domestic-partner benefits. Many employers are beginning to understand that being perceived as inclusive will make them more attractive to a larger pool of job applicants. Furthermore, many organizations have come to recognize that gender and sexual orientation equity aligns to their mission and ethics.

Unfortunately, the percentage of hate crimes relating to sexual orientation discrimination has increased. Indeed, LGBTQ employees are stigmatized so much that in a recent study, researchers found that straight-identifying participants were more attracted to employers with no job security to offer them compared to gay-friendly employers. In other words, individuals would waive job security to avoid working with sexual minorities. Also, compared to heterosexuals, sexual minorities have higher education levels but still face hiring and treatment discrimination frequently.

LGBTQ employees are often faced with the decision of whether or not to be truthful about their sexual orientation at work for fear of being stigmatized and treated unfairly. To be clear, any stigmatization is the fault of the people who mistreat others, and sometimes even the organization itself. But as a result, LGTBQ and other people may choose to engage in what is sometimes called passing, or the decision not to disclose something about oneself. Passing often involves a great risk of emotional strain that can affect performance and wellbeing. Individuals who pass may distance themselves from coworkers or clients to avoid disclosure about their personal life. This behavior can also result in decreased networking and mentoring opportunities, which over time can limit advancement opportunities. The decision to be transparent about sexual orientation is sometimes called **revealing**. Just like passing, revealing has its own set of risks including being ostracized, stigmatized, and subjected to other forms of discrimination at work. However, compared to passing, the benefits of building relationships at work and using their identity as a catalyst for tolerance and progressive organizational change may outweigh the risks when LGBTQ employees decide to reveal. The decision to "come out" should be made exclusively by the individual; "outing" someone else as any sexual orientation or gender identity is considered highly inappropriate and hurtful, and may have employment-related consequences.

Research shows that when laws are passed to prevent sexual orientation discrimination, incidents of workplace discrimination decrease. This same effect occurs when firms adopt policies that protect the rights of sexual minority employees. By creating a safe and inclusive work environment for LGBTQ employees, companies can create a culture of tolerance and trust for all employees regardless of their sexual orientation or gender identity.

MANAGING CHANGE

Removing Bias In Recruiting

An increasing number of companies are testing new and innovative methods of recruiting. In many cases, firms remove any identifying information about applicants during the recruitment process. An example of this may include anonymous applications that omit fields requesting information such as an applicant’s name or age. Using computer application technology, some companies like Google administer surveys to their anonymous applicants that measure the abilities required for the job before they are considered in the next step of the recruitment process. Alternatively, companies may request that applicants remove identifying information such as names and address from their resumes before applying for positions. As resumes are received, hiring managers can assign a temporary identification number.

Although more companies are using this method of recruiting, the idea is not new for symphony orchestras, many of which have been using this type of auditioning since the 1970s. In some instances, musicians audition behind screens so they are evaluated only by their music. This process removes bias associated with race and gender because the performer cannot be seen and only heard. A study investigating this practice examined 11 symphony orchestras that varied their auditions. Researchers found that those orchestras that held "unseen" auditions increased the likelihood that a woman would be hired by between 25 and 46%. A recruitment process like this can help organizations attract more candidates, hire the best talent, increase their workplace diversity, and avoid discrimination liability.

In other efforts, organizations work to alter their job descriptions to remove terms that result in gender or other biases. By involving diversity and equity experts, and sometimes using artificial intelligence-based language analysis, recruiters can eliminate unintended barriers and improve their hiring processes. Sources: Grothaus, M. (Mar 14 2016). How “blind” recruitment works and why you should consider it. Fast Company. Retrieved from https://www.fastcompany.com/3057631/...hould-consider; and MIller, C.C. (Feb 25, 2016). Is blind hiring the best hiring? The New York Times Magazine. Retrieved from https://www.nytimes.com/2016/02/28/m...st-hiring.html.

Discussion Questions

1. Should all companies change their resume screening and interview processes to eliminate biases or are there exceptions that must be considered?
2. If improved recruiting helps eliminate bias during the recruitment process, then what does that say about social media platforms such as Linked In that are commonly used for recruiting applicants? Will using those platforms expose companies to greater liability compared to using more traditional means of recruiting?
3. How does working to eliminate bias recruiting help organizations? How may it hinder organizations?

Immigrant Workers

Every year a new record is set for the time it takes to reach the U.S. cap of H-1B visas granted to employers. H- 1B visas are a type of **work visa**, a temporary documented status that authorizes individuals to permanently or temporarily live and work in the United States. As a result of the demand for work visas by employers, the number of immigrant workers in the U.S. workforce has steadily grown within the last decade from 15% in 2005 to 17% in 2016. Compared to those born in the United States, the immigrant population in America is growing significantly faster. This is partly because of the U.S. demand for workers who are proficient in math and science and wish to work in America.

Although a huge demand for immigrant labor exists in the United States, immigrant labor exploitation occurs, with immigrant employees receiving lower wages and working longer hours compared to American workers. Foreign-born job seekers are attracted to companies that emphasize work visa sponsorship for international employees, yet they are still mindful of their vulnerability to unethical employers who may try to exploit them. For example, Lambert and colleagues found that some of the job-seeking MBA students from the Philippines in their study

believed that companies perceived to value international diversity and sponsor H-1B visas signaled a company wishing to exploit workers. Others believed that those types of companies might yield diminishing returns to each Filipino in the company because their token value becomes limited. In news stories, companies have been accused of drastically shortchanging foreign student interns on their weekly wages. In another case, Infosys, a technology consulting company, paid $34 million to settle allegations of visa fraud due to suspicion of underpaying foreign workers to increase profits.

Other Forms of Diversity at Work

Workers with disabilities are projected to experience a 10% increase in job growth through the year 2022. This means that more public and corporate policies will be revised to allow greater access to training for workers with disabilities and employers. Also, more companies will use technology and emphasize educating employees about physical and mental disabilities as workplace accommodations are used more often.

In the past, the United States has traditionally been a country with citizens who predominantly practice the Christian faith. However, over the past almost 30 years the percentage of Americans who identify as Christian has significantly decreased—by approximately 12%. Over that same time period, affiliation with other religions overall increased by approximately 25%. The increase in immigrant workers from Asian and Middle Eastern countries means that employers must be prepared to accommodate religious beliefs other than Christianity. Although federal legislation protects employees from discrimination on the basis of race, religion, and disability status, many employers have put in place policies of their own to deal with the variety of diversity that is increasingly entering the workforce.

CONCEPT CHECK

1. How is diversity defined in relation to the workplace?
2. What are the components that make up a diverse workplace and workforce?

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1.4: Diversity and Its Impact on Companies

3. How does diversity impact companies and the workforce?

Due to trends in globalization and increasing ethnic and gender diversity, it is imperative that employers learn how to manage cultural differences and individual work attitudes. As the labor force becomes more diverse there are both opportunities and challenges to managing employees in a diverse work climate. Opportunities include gaining a competitive edge by embracing change in the marketplace and the labor force. Challenges include effectively managing employees with different attitudes, values, and beliefs, in addition to avoiding liability when leadership handles various work situations improperly.

Reaping the Advantages of Diversity

The business case for diversity introduced by Taylor Cox and Stacy Blake outlines how companies may obtain a competitive advantage by embracing workplace diversity. Six opportunities that companies may receive when pursuing a strategy that values diversity include cost advantages, improved resource acquisition, greater marketing ability, system flexibility, and enhanced creativity and better problem solving (see Figure 1.4.1).

Figure 1.4.1: Managing Cultural Diversity (Attribution: Copyright Rice University, OpenStax, under CC-BY 4.0 license)

Cost Advantages

Traits such as race, gender, age, and religion are protected by federal legislation against various forms of discrimination (covered later in this chapter). Organizations that have policies and procedures in place that encourage tolerance for a work climate of diversity and protect female and minority employees and applicants from discrimination may reduce their likelihood of being

sued due to workplace discrimination. Cox and Blake identify this decreased liability as an opportunity for organizations to reduce potential expenses in lawsuit damages compared to other organizations that do not have such policies in place.

Additionally, organizations with a more visible climate of diversity experience lower turnover among women and minorities compared to companies that are perceived to not value diversity. Turnover costs can be substantial for companies over time, and diverse companies may ameliorate turnover by retaining their female and minority employees. Although there is also research showing that organizations that value diversity experience a higher turnover of White employees and male employees compared to companies that are less diverse, some experts believe this is due to a lack of understanding of how to effectively manage diversity. Also, some research shows that White people with a strong ethnic identity are attracted to diverse organizations similarly to non-White people.

Resource Acquisition

Human capital is an important resource of organizations, and it is acquired through the knowledge, skills, and abilities of employees. Organizations perceived to value diversity attract more women and minority job applicants to hire as employees. Studies show that women and minorities have greater job-pursuit intentions and higher attraction toward organizations that promote workplace diversity in their recruitment materials compared to organizations that do not. When employers attract minority applicants, their labor pool increases in size compared to organizations that are not attractive to them. As organizations attract more job candidates, the chances of hiring quality employees increases, especially for jobs that demand highly skilled labor. In summary, organizations gain a competitive advantage by enlarging their labor pool by attracting women and minorities.

Marketing

When organizations employ individuals from different backgrounds, they gain broad perspectives regarding consumer preferences of different cultures. Organizations can gain insightful knowledge and feedback from demographic markets about the products and services they provide. Additionally, organizations that value diversity enhance their reputation with the market they serve, thereby attracting new customers.

System Flexibility

When employees are placed in a culturally diverse work environment, they learn to interact effectively with individuals who possess different attitudes, values, and beliefs. Cox and Blake contend that the ability to effectively interact with individuals who differ from oneself builds *cognitive flexibility*, the ability to think about things differently and adapt one's perspective. When employees possess cognitive flexibility, system flexibility develops at the organizational level. Employees learn from each other how to tolerate differences in opinions and ideas, which allows communication to flow more freely and group interaction to be more effective.

Creativity and Problem Solving

Teams from diverse backgrounds produce multiple points of view, which can lead to innovative ideas. Different perspectives lead to a greater number of choices to select from when addressing a problem or issue.

Life experience varies from person to person, sometimes based on race, age, or sex. Creativity has the opportunity to flourish when those experiences are shared. Diverse teams not only produce more alternatives, but generate a broader range of perspectives to address tasks and problems. One way in which diverse teams enhance problem-solving ability is by preventing **groupthink**, a dysfunction in decision-making that occurs in homogeneous groups as a result of group pressures and group members' desire for conformity and consensus. Diverse group membership prevents groupthink because individuals from varied backgrounds with different values, attitudes, and beliefs can test the assumptions and reasoning of group members' ideas.

Aligning Diversity Programs with an Organization's Mission and Strategic Goals

Diversity helps organizations perform best when it is aligned with a specific business strategy. For example, when companies use heterogeneous management teams that are directed by an entrepreneurial strategy focusing on innovation, the companies' productivity increases.

When an entrepreneurial strategy is not present, however, team diversity has little effect on productivity. An entrepreneurial strategy includes innovation that reflects a company's commitment to being creative, supporting new ideas, and supporting experimentation as a way to gain a competitive advantage. In other words, managers may properly utilize the multiple perspectives that emerge from heterogeneous teams by integrating them as a resource for pursuing the overall strategy of the organization.

Using Human Resources Tools Strategically

To effectively align diversity with an organization's strategy, the human resources function must be able to engage employees at dynamic levels. Using a strategic human resources management approach to an organization can successfully integrate diversity with the organization's goals and objectives. **Strategic human resources management (SHRM)** is a system of activities arranged to engage employees in a manner that assists the organization in achieving a sustainable competitive advantage. SHRM practices vertically integrate with the mission and strategy of the organization while horizontally integrating human resources activities across its functional areas. By doing so, a unique set of resources can be made available to specific to the needs of the organization. Furthermore, when human resources becomes a part of the strategic planning process instead of just providing ancillary services, improved communication, knowledge sharing, and greater synergy between decision-makers can occur within the organization to improve organizational functioning.

The **resource-based view** of the firm has been used to support the argument for diversity because it demonstrates how a diverse workforce can create a sustainable competitive advantage

for organizations. Based on the resource-based view of the firm, when companies possess resources that are rare, valuable, difficult to imitate, and non-substitutable, a sustained competitive advantage can be attained. The SHRM approach assumes that human capital—the current and potential knowledge, skills, and abilities of employees—is instrumental to every organization's success and sustainability and longevity.

If a diverse composition of employees within organizations is rare, employing minorities in positions of leadership is even rarer. One exception is Northern Trust, an investment management firm that was recently listed on Forbes magazine's 2018 Best Employers for Diversity list. Thirty-eight percent of Northern Trust's top executives are women, which is impressive because it matches the average percentage of women in full-time one-year MBA programs over the past five years. The average for S&P 500 companies is just 27%. In addition, African Americans make up 23% of Northern Trust's board, which also demonstrates the commitment Northern Trust has to diversity. This rare degree of diversity helps Northern Trust become an employer of choice for minorities and women. In turn, attracting minority applicants increases the labor pool available to Northern Trust and increases its ability to find good talent.

Figure 1.4.2: The Disability Awareness Players present to the staff at Northern Trust (Credit: JJ's List/ flickr/ Attribution 2.0 Generic (CC BY 2.0))

Diverse companies may capitalize on the multiple perspectives that employees from different backgrounds contribute to problem solving and idea generation. In group settings, members from collectivist cultures from Asia and South America, for example, engage with others on tasks differently than members from North America. Similarly, Asian, Black, and Hispanic people usually act more collectively and engage more interdependently than White people, who are generally more individualistic. More harmonious working interactions benefit group cohesion and team performance, and employees can grasp better ways of doing things when there is a diverse population to learn from.

For a company to attain a sustained competitive advantage, its human resource practices must be difficult to copy or imitate. As we will see later in the chapter, companies may hold one of three perspectives on workplace diversity. The integration and learning perspective results in the best outcomes for employees and the organization. However, it is not easy to become an employer that can effectively manage diversity and avoid the challenges we learned about earlier in this chapter. Historical conditions and often-complex interplay between various organizational units over time can contribute to a company's ability to perform effectively as a diverse organization. Best practices for targeting diverse applicants or resolving conflicts based on cultural differences between employees may occur organically and later become codified into the organizational culture. Sometimes, however, the origin of diversity practices is unknown because they arose from cooperation among different functional areas (e.g., marketing and human resources working strategically with leadership to develop recruitment ideas) that occurred so long ago that not even the company itself, let alone other companies, could replicate the process.

Diversity and Organizational Performance

Research indicates that having diversity in an organization produces mixed results for its success. Some studies show a positive relationship, some show a negative relationship, and others show no relationship between diversity and performance. Some researchers believe that although findings regarding a direct relationship between diversity and success in the marketplace may be inconsistent, the relationship may be due to other variables not taken into account.

Taking the resource-based view perspective, Richard and colleagues demonstrated that racially diverse banking institutions focused on innovation experienced greater performance than did racially diverse banks with a low focus on innovation. These findings suggest that for the potential of racial diversity to be fully realized, companies should properly manage the system flexibility, creativity, and problem-solving abilities used in an innovative strategy. Other studies show that when top management includes female leadership, firm performance improves when organizations are innovation-driven.

CONCEPT CHECK

1. What are the challenges and opportunities that diversity provides to companies?
2. What are the responsibilities of human resources regarding diversity?
3. Can diversity be a strategic advantage to organizations?

1.5: Challenges of Diversity

4. What is workplace discrimination, and how does it affect different social identity groups?

Although diversity has its benefits, there are also challenges that managers must face that can only be addressed with proper leadership. Some of the most common challenges observed in organizations and studied in research include lower organizational attachment and misunderstanding work diversity initiatives and programs.

Lower Organizational Attachment

Although diversity programs attract and retain women and minorities, they may have the opposite effect on other, non-minority employees. When diversity is not managed effectively, White and male employees can feel alienated from or targeted by the organization as diversity programs are put in place. A study that examined 151 work groups across three large organizations investigated whether the proportion of group membership based on race or sex affected the group members' absentee rates, psychological attachment to their work group, and turnover intentions, three factors that play significant roles in an employee's attachment to their organization. Results showed a positive relationship between group heterogeneity and lower organizational attachment, higher turnover intentions, and greater frequency of absences for men and for White group members. In other words, as work group diversity increased, White employees and male employees felt less attached to the organization and were more likely to quit. Because heterogeneous groups improve creativity and judgement, managers should not avoid using them because they may be challenging to manage. Instead, employers need to make sure they understand the communication structure and decision-making styles of their work groups and seek feedback from employees to learn how dominant group members may adjust to diversity.

Legal Challenges and Diversity

The legal system is used to combat discrimination. Among the ways that we will cover here are reverse discrimination, workplace discrimination, harassment, age discrimination, disability discrimination, national origin discrimination, pregnancy discrimination, race/color discrimination, religious discrimination, sex-based discrimination, and other forms of discrimination.

Reverse Discrimination

As research shows, workplace discrimination against women and racial or ethnic minorities is common. **Reverse discrimination** is a term that has been used to describe a situation in which dominant group members perceive that they are experiencing discrimination based on their race or sex. This type of discrimination is uncommon, but is usually claimed when the dominant group perceives that members of a protected (diverse) class of citizens are given preference in workplace or educational opportunities based not on their merit or talents, but on a prescribed preferential treatment awarded only on the basis of race or sex.

Research conducted in the 1990s shows that only six federal cases of reverse discrimination were upheld over a four-year period (1990–1994), and only 100 of the 3,000 cases for discrimination over that same four-year period were claims of reverse discrimination. Interestingly, a recent poll administered by the Robert Wood Johnson Foundation and the Harvard T.H. Chan School of Public Health found that a little more than half of White Americans believe that White people face discrimination overall, and 19% believe they have experienced hiring discrimination due to the color of their skin. This misperception stems in part from the recalibration of the labor force as it become more balanced due to increased equal employment opportunities for everyone. Members of dominant identity groups, White people and men, perceive fewer opportunities for themselves when they observe the workforce becoming more diverse. In reality, the workforce of a majority of companies is still predominantly White and male employees. The only difference is that legislation protecting employees from discrimination and improvements in equal access to education have created opportunities for minority group members when before there were none.

Workplace Discrimination

Workplace discrimination occurs when an employee or an applicant is treated unfairly at work or in the job-hiring process due to an identity group, condition, or personal characteristic such as the ones mentioned above. Discrimination can occur through marital status, for example when a person experiences workplace discrimination because of the characteristics of a person to whom they are married. Discrimination can also occur when the offender is of the same protected status of the victim, for example when someone discriminates against someone based on a national origin that they both share.

The **Equal Employment Opportunity Commission** (EEOC) was created by Title VII of the Civil Rights Act of 1964 with the primary goal of making it illegal to discriminate against someone in the workplace due to their race, national origin, sex, disability, religion, or pregnancy status., and the 2020 Supreme Court decision upheld the same protections for sexual orientation and gender identity. The EEOC enforces laws and issues guidelines for employment-related treatment. It also has the authority to investigate charges of workplace discrimination, attempt to settle the charges, and, if necessary, file lawsuits when the law has been broken.

All types of workplace discrimination are prohibited under different laws enacted and enforced by the EEOC, which also considers workplace harassment and sexual harassment forms of workplace discrimination and mandates that men and women must be given the same pay for equal work.

The provision for equal pay is covered under the **Equal Pay Act of 1963**, which was an amendment to the Fair Labor Standards Act of 1938. Virtually all employers are subject to the provisions of the act, which was an attempt to address pay inequities between men and women. More than 50 years later, however, women still earn about 80 cents to every dollar that men earn, even while performing the same or similar jobs.

Harassment

Harassment is any unwelcome conduct that is based on characteristics such as age, race, national origin, disability, gender, or pregnancy status. Harassment is a form of workplace discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Americans with Disabilities Act of 1990.

Sexual harassment specifically refers to harassment based on a person's sex, and it can (but does not have to) include unwanted sexual advances, requests for sexual favors, or physical and verbal acts of a sexual nature. Though members of any sex can be the victim of sexual harassment, women are the primary targets of this type of harassment.

Age Discrimination

Age discrimination consists of treating an employee or applicant less favorably due to their age. The **Age Discrimination in Employment Act (ADEA)** forbids discrimination against individuals who are age 40 and above. The act prohibits harassment because of age, which can include offensive or derogatory remarks that create a hostile work environment.

Disability Discrimination

A person with a disability is a person who has a physical or mental impairment that limits one or more of the person's life actions. **Disability discrimination** occurs when an employee or applicant who is covered by the **Americans with Disabilities Act (ADA)** is treated unfavorably due to their physical or mental disability. The ADA is a civil rights law that prohibits discrimination in employment, public services, public accommodations, and telecommunications against people with disabilities. To be covered under the ADA, individuals must be able to perform the essential functions of their job with or without reasonable accommodations. Research has shown that reasonable accommodations are typically of no or low cost (less than $100) to employers.

National Origin Discrimination

National origin discrimination involves treating someone unfavorably because of their country of origin, accent, ethnicity, or appearance. EEOC regulations make it illegal to implement an employment practice or policy that applies to everyone if it has a negative impact on people of a certain national origin. For example, employers cannot institute an "English-only" language policy unless speaking English at all times is essential to ensure the safe and efficient operation of the business. Employers also cannot mandate employees be fluent in English unless fluency in English is essential to satisfactory job performance. The EEOC also prohibits businesses from hiring only U.S. citizens or lawful residents unless the business is required by law to do so.

Pregnancy Discrimination

Pregnancy discrimination involves treating an employee or applicant unfairly because of pregnancy status, childbirth, or medical conditions related to pregnancy or childbirth.
The **Pregnancy Discrimination Act (PDA)** prohibits any discrimination as it relates to pregnancy in any of the following areas: hiring, firing, compensation, training, job assignment,

insurance, or any other employment conditions. Further, certain conditions that result from pregnancy may be protected under the ADA, which means employers may need to make reasonable accommodations for any employee with disabilities related to pregnancy.

Under the **Family and Medical Leave Act (FMLA)**, new parents, including adoptive and foster parents, may be eligible for 12 weeks of unpaid leave (or paid leave only if earned by the employee) to care for the new child. Also, nursing mothers have the right to express milk on workplace premises.

Race/Color Discrimination

Race/color discrimination involves treating employees or applicants unfairly because of their race or because of physical characteristics typically associated with race such as skin color, hair color, hair texture, or certain facial features.

As with national origin discrimination, certain workplace policies that apply to all employees may be unlawful if they unfairly disadvantage employees of a certain race. Policies that specify that certain hairstyles must or must not be worn, for example, may unfairly impact African American employees, and such policies are prohibited unless their enforcement is necessary to the operations of the business.

Religious Discrimination

Religious discrimination occurs when employees or applicants are treated unfairly because of their religious beliefs. The laws protect those who belong to traditional organized religions and those who do not belong to organized religions but hold strong religious, ethical, or moral beliefs of some kind. Employers must make reasonable accommodations for employees' religious beliefs, which may include flexible scheduling or modifications to workplace practices. Employees are also permitted accommodation when it comes to religious dress and grooming practices, unless such accommodations will place an undue burden on the employer. Employees are also protected from having to participate (or not participate) in certain religious practices as terms of their employment.

Sex-Based Discrimination

Sex-based discrimination occurs when employees or applicants are treated unfairly because of their sex. This form of discrimination includes unfair treatment due to gender, transgender status, and sexual orientation. Harassment and policies that unfairly impact certain groups protected under sex discrimination laws are prohibited under EEOC legislation.

The key diversity-related federal laws are summarized in Table 1.5.1.

Key Diversity Related Legislation	
Title VII of the Civil Rights Act of 1964	Created the Equal Employment Opportunity Commission with the primary role of making it illegal to discriminate against someone in the workplace due to their race, national origin, sex, disability, religion, or pregnancy status.
Equal Pay Act of 1963	Mandates that men and women must be given the same pay for equal work
Age Discrimination in Employment Act (ADEA)	Forbids discrimination against individuals who are age 40 and above.
Americans with Disabilities Act (ADA)	Prohibits discrimination against people with disabilities in employment, public services, public accommodations, and in telecommunications
Pregnancy Discrimination Act (PDA)	Prohibits any discrimination as it relates to pregnancy, including hiring, firing, compensation, training, job assignment, insurance, or any other employment conditions.
Family and Medical Leave Act (FMLA)	Grants new parents up to 12 weeks of paid or unpaid leave to care for the new child, and gives nursing mothers the right to express milk on workplace premises.

Table 1.5.1 (Attribution: Copyright Rice University, OpenStax, under CC-BY 4.0 license)

Other Types of Discrimination

Beyond the key types of discrimination outlined by the EEOC, diversity and management scholars have identified other types of discrimination that frequently impact certain identity groups more than others. **Access discrimination** is a catchall term that describes when people are denied employment opportunities because of their identity group or personal characteristics such as gender, race, age, or other factors. **Treatment discrimination** describes a situation in which people are employed but are treated differently while employed, mainly by receiving different and unequal job-related opportunities or rewards. Scholars have also identified a form

of discrimination called **interpersonal** or **covert discrimination** that involves discrimination that manifests itself in ways that are not visible or readily identifiable, yet is serious because it can impact interpersonal interactions between employees, employees and customers, and other important workplace relationships.

This type of discrimination poses unique challenges because it is difficult to identify. For example, one study examining customer service and discrimination found that obese customers were more likely to experience interpersonal discrimination than average-weight customers. Salespersons spent less time interacting with obese customers than average-weight customers, and average-weight customers reported more positive interactions with salespeople when asked about standard customer service metrics such as being smiled at, receiving eye contact, and perceived friendliness.

CONCEPT CHECK

1. What is the role of the EEOC?
2. What are the types of discrimination encountered in the workplace?

1.6: Key Diversity Theories

5. What key theories help managers understand the benefits and challenges of managing the diverse workforce?

Many theories relevant to managing the diverse workforce center on an individual's reactions (such as categorization and assessment of the characteristics of others) to people who are different from the individual. Competing viewpoints attempt to explain how diversity is either harmful or beneficial to organizational outcomes.

- The **cognitive diversity hypothesis** suggests that multiple perspectives stemming from the cultural differences between group or organizational members result in creative problem solving and innovation.
- The **similarity-attraction paradigm** and **social identity theory** hold that individuals' preferences for interacting with others like themselves can result in diversity having a negative effect on group and organizational outcomes.
- The **justification-suppression model** explains under what conditions individuals act on their prejudices.

Cognitive Diversity Hypothesis

Some research shows that diversity has no relationship to group performance, and some shows that there is a relationship. Of the latter research, some shows a negative relationship (greater diversity means poorer group performance, less diversity means better group performance) and some shows a positive relationship.

These various findings may be due to the difference in how diversity can affect group members. **Cognitive diversity** refers to differences between team members in characteristics such as expertise, experiences, and perspectives. Many researchers contend that physical diversity characteristics such as race, age, or sex (also known as bio-demographic diversity) positively influence performance because team members contribute unique cognitive attributes based on their experiences stemming from their demographic background.

There is research that supports the relationship between group performance and task-related diversity as reflected in characteristics not readily detectable such as ability, occupational expertise, or education. However, the relationship between bio-demographic diversity and group performance has produced mixed results. For example, Watson and colleagues studied the comparison of group performance between culturally homogeneous and culturally heterogeneous groups. Groups were assigned business cases to analyze, and their group performance was measured over time based on four factors: the range of perspectives generated, the number of problems identified in the case, the number of alternatives produced, and the quality of the solution. Overall performance was also calculated as the average of all the factors. The factors were measured at four intervals: Interval 1 (at 5 weeks), Interval 2 (at 9 weeks), Interval 3 (at 13 weeks), and Interval 4 (at 17 weeks).

For Intervals 1 and 2, the overall performance of homogeneous groups was higher than heterogeneous groups. However, by Intervals 3 and 4, there were no significant differences in

overall performance between the groups, but the heterogeneous group outperformed the homogeneous group in generating a greater range of perspectives and producing a greater number of alternatives.

This research suggests that although homogeneous groups may initially outperform culturally diverse groups, over time diverse groups benefit from a wider range of ideas to choose from when solving a problem. Based on the cognitive diversity hypothesis, these benefits stem from the multiple perspectives generated by the cultural diversity of group members. On the other hand, it takes time for members of diverse groups to work together effectively due to their unfamiliarity with one another, which explains why homogeneous groups outperform heterogeneous groups in the early stages of group functioning. (This is related to the similarity-attraction paradigm, discussed in the next section.) Other studies have shown that ethnically diverse groups cooperate better than homogeneous groups at tasks that require decision-making and are more creative and innovative. While homogeneous groups may be more efficient, heterogeneous groups sacrifice efficiency for effectiveness in other areas.

Similarity-Attraction Paradigm

The cognitive diversity hypothesis explains how diversity benefits organizational outcomes. The similarity-attraction paradigm explains how diversity can have negative outcomes for an organization.

Some research has shown that members who belong to diverse work units may become less attached, are absent from work more often, and are more likely to quit. There is also evidence that diversity may produce conflict and higher employee turnover. Similarity-attraction theory is one of the foundational theories that attempts to explain why this occurs; it posits that individuals are attracted to others with whom they share attitude similarity.

Attitudes and beliefs are common antecedents to interpersonal attraction. However, other traits such as race, age, sex, and socioeconomic status can serve as signals to reveal deep-level traits about ourselves. For example, numerous studies investigating job-seeker behaviors have shown that individuals are more attracted to companies whose recruitment literature includes statements and images that reflect their own identity group. One study showed that companies perceived to value diversity based on their recruitment literature are more attractive to racial minorities and women compared to White people. Another study showed that when organizations use recruitment materials that target sexual minorities, the attraction of study participants weakened among heterosexuals. Even foreign-born potential job candidates are more attracted to organizations that depict international employees in their job ads.

Social Cognitive Theory

Social cognitive theory is another theory that seeks to explain how diversity can result in negative outcomes in a group or organization. Social cognitive theory suggests that people use categorization to simplify and cope with large amounts of information. These categories allow us to quickly and easily compartmentalize data, and people are often categorized by their visible characteristics, such as race, sex, and age. Thus, when someone sees a person of a particular race,

automatic processing occurs and beliefs about this particular race are activated. Even when the person is not visible, they can be subject to this automatic categorization. For example, when sorting through resumes a hiring manager might engage in gender categorization because the person's name provides information about the person's gender or racial categorization because the person's name provides information about their race. **Stereotypes** are related to this categorization, and refer to the overgeneralization of characteristics about large groups. Stereotypes are the basis for prejudice and discrimination. In a job-related context, using categorization and stereotyping in employment decision-making is often illegal. Whether illegal or not, this approach is inconsistent with a valuing-diversity approach.

Social Identity Theory

Social identity theory is another explanation of why diversity may be perceived as a negative outcome. Social identity theory suggests that when we first come into contact with others, we categorize them as belonging to an in-group (i.e., the same group as us) or an out-group (not belonging to our group). We tend to see members of our in-group as heterogeneous but out-group members as homogeneous. That is, we perceive out-group members as having similar attitudes, behaviors, and characteristics (i.e., fitting stereotypes).

Researchers posit that this perspective may occur because of the breadth of interactions we have with people from our in-group as opposed to out-groups. There is often strong in-group favoritism and, sometimes, derogation of out-group members. In some cases, however, minority group members do not favor members of their own group. This may happen because of being continually exposed to widespread beliefs about the positive attributes of White people or men and to common negative beliefs about some minorities and women. When in-group favoritism does occur, majority-group members will be hired, promoted, and rewarded at the expense of minority-group members, often in violation of various laws.

Schema Theory

Schema theory explains how individuals encode information about others based on their demographic characteristics. Units of information and knowledge experienced by individuals are stored as having patterns and interrelationships, thus creating schemas that can be used to evaluate one's self or others. As a result of the prior perceived knowledge or beliefs embodied in such schemas, individuals categorize people, events, and objects. They then use these categories to evaluate newly encountered people and make decisions regarding their interaction with them.

Based on schema theory, employees develop schemas about coworkers based on race, gender, and other diversity traits. They also form schemas about organizational policies, leadership, and work climates. Schemas formed can be positive or negative and will affect the attitudes and behaviors employees have toward one another.

Justification-Suppression Model

The **justification-suppression model** explains the circumstances in which prejudiced people might act on their prejudices. The process by which people experience their prejudice is

characterized as a “two-step” process in which people are prejudiced against a certain group or individual but experience conflicting emotions in regard to that prejudice and are motivated to suppress their prejudice rather than act upon it. Theory about prejudice suggests that all people have prejudices of some sort, that they learn their prejudices from an early age, and that they have a hard time departing from them as they grow older. Prejudices are often reinforced by intimate others, and individuals use different methods to justify those prejudices.

Most people will attempt to suppress any outward manifestations of their prejudices. This suppression can come from internal factors like empathy, compassion, or personal beliefs regarding proper treatment of others. Suppression can also come from societal pressures; overt displays of prejudice are no longer socially acceptable, and in some cases are illegal.

At times, however, prejudiced individuals will look for reasons to justify acting on their prejudiced beliefs. Research has shown people are more likely to act in prejudiced ways when they are physically or emotionally tired, when they can do so and remain anonymous, or when social norms are weak enough that their prejudiced behavior will not be received negatively.

CONCEPT CHECK

1. What are the theories that can help managers understand diversity?

1.7: Benefits and Challenges of Workplace Diversity

6. How can managers reap benefits from diversity and mitigate its challenges?

Much theoretical work has espoused the benefits of workplace diversity, but empirical studies have often had conflicting results, which have shown researchers that certain conditions can affect how successful initiatives to increase and enhance workplace diversity are. Managers can work to make sure that the efforts and initiatives they enact to increase diversity in the workplace come from a perspective that ensures and strives for equity and fairness, and not simply from the perspective of only benefitting the company's bottom line. By approaching diversity and diversity issues in a thoughtful, purposeful way, managers can mitigate the challenges posed by a diverse workforce and enhance the benefits a diverse workforce can offer.

Three Perspectives on Workplace Diversity

Ely and Thomas's work on cultural diversity was designed to theoretically and empirically support some of the hypothesized relationships between diversity and workplace outcomes. Their research yielded a paradigm that identifies three perspectives regarding workplace diversity: integration and learning, access and legitimacy, and discrimination and fairness.

The Integration-and-Learning Perspective

The **integration-and-learning perspective** posits that the different life experiences, skills, and perspectives that members of diverse cultural identity groups possess can be a valuable resource in the context of work groups. Under this perspective, the members of a culturally diverse workgroup can use their collective differences to think critically about work issues, strategies, products, and practices in a way that will allow the group to be successful in its business operations. The assumption under this perspective is that members of different cultural identity groups can learn from each other and work together to best achieve shared goals. This perspective values cultural identity and strongly links diversity of the group to the success of the firm.

Downfalls of the integration-and-learning perspective can be that White members of the work group can feel marginalized when they are not asked to join in on diversity-related projects or discussions. Similarly, workforce members of color might experience burnout if they are always expected to work on those projects and discussions that specifically deal with diversity issues.

The Access-and-Legitimacy Perspective

The **access-and-legitimacy perspective** focuses on the benefit that a diverse workforce can bring to a business that wishes to operate within a diverse set of markets or with culturally diverse clients. Work groups that operate under this perspective are doing so in order to gain access to diverse markets and because their diversity affords them some level of legitimacy when attempting to gain access to diverse markets. This type of workplace diversity is more of a functional type of diversity that does not attempt to integrate or value diversity at the business's core. The danger of this diversity perspective is that it can limit the roles of certain minority

groups by valuing members of these groups only because they can increase the access to diverse markets and clients and not because they can make other potentially valuable contributions.

The Discrimination-and-Fairness Perspective

The **discrimination-and-fairness perspective** stems from a belief that a culturally diverse workforce is a moral duty that must be maintained in order to create a just and fair society. This perspective is characterized by a commitment to equal opportunities in hiring and promotions, and does not directly link a work group's productivity or success with diversity. Many times firms operating under this perspective will have a spoken or unspoken assumption that assimilation into the dominant (White) culture should take place by the members of other cultural identity groups. One drawback of this perspective is that because it measures progress by the recruitment and retention of diverse people, employees of traditionally underrepresented groups can feel devalued. Often, assimilation is pushed on diverse employees under the guise of reducing conflict or in an effort to demonstrate that differences between cultural identity groups are unimportant.

Figure 1.7.1 shows the degrees of effectiveness and benefits for each perspective.

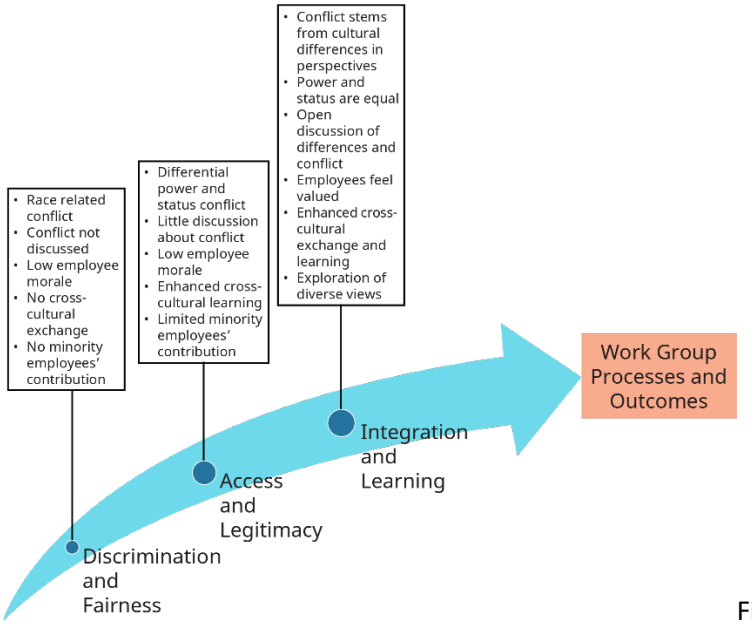
• Race related conflict
• Conflict not discussed
• Low employee morale
• No cross-cultural exchange
• No minority employees' contribution
• Differential power and status conflict
• Little discussion about conflict
• Low employee morale
• Enhanced cross-cultural learning
• Limited minority employees' contribution
• Conflict stems from cultural differences in perspectives
• Power and status are equal
• Open discussion of differences and conflict
• Employees feel valued
• Enhanced cross-cultural exchange and learning
• Exploration of diverse views
Work Group Processes and Outcomes
Integration and Learning
Access and Legitimacy
Discrimination and Fairness

Figure 1.7.1: Cultural Diversity Perspectives at Work. Source: Adapted from Ely, Robin J., and David A. Thomas. "Cultural diversity at work: The effects of diversity perspectives on work group processes and outcomes." Administrative science quarterly. 46.2 (2001): 229-273.

CONCEPT CHECK

1. How can managers reap the benefits of diversity?
2. How can managers mitigate the challenges of diversity?
3. What is the access-and-legitimacy perspective? Differentiate it from the discrimination-and-fairness perspective.

1.8: Recommendations for Managing Diversity

7. What can organizations do to ensure applicants, employees, and customers from all backgrounds are valued?

Organizations that are committed to equality and inclusion must take steps to combat the examples of discrimination and harassment that have been covered in this chapter. And they must take steps to make diversity a goal in the pre-employment stages as well as in the post-employment stages. Anyone with managerial or supervisory responsibilities should pay careful attention to hiring and performance-rewarding practices, and make sure to rely on relevant information for making decisions and ignore race-based stereotypes. The following are examples of what leaders and organizations can do make sure employees feel valued.

Interview Selection Process

To ensure fairness for all applicants, organizations should use **highly structured interviews** during the selection process to avoid bias based on race or gender. Highly structured interviews consists of the following 15 characteristics: "(1) job analysis, (2) same questions, (3) limited prompting, (4) better questions, (5) longer interviews, (6) control of ancillary information, (7) limited questions from candidates, (8) multiple rating scales, (9) anchored rating scales, (10) detailed notes, (11) multiple interviewers, (12) consistent interviewers, (13) no discussion between interviews, (14) training, and (15) statistical prediction." Similarity bias can occur when interviewers prefer interviewees with whom they share similar traits. Organizations can mitigate this challenge if all 15 characteristics of a structured interview are used consistently with each job applicant.

Diversified Mentoring Relationships

Thanks to the rapid growth of international travel and globalization, managers are often called upon to manage a workforce that is increasingly diverse. Research has shown that racially and ethnically diverse firms have better financial performance than more homogeneous firms, because, as mentioned, employees from different backgrounds and with different experiences can give the firm a competitive advantage in various ways. It is necessary, however, that managers and those in positions of power are adequately equipped to manage diverse workforces in ways that are beneficial to all. **Diversified mentoring relationships** are relationships in which the mentor and the mentee differ in terms of their status within the company and within larger society. The differences could be in terms of race, gender, class, disability, sexual orientation, or other status. Research has found that these types of relationships are mutually beneficial and that the mentor and the mentee both have positive outcomes in terms of knowledge, empathy, and skills related to interactions with people from different power groups.

MANAGERIAL LEADERSHIP

Diversity Training Programs

As the workforce becomes increasingly more diverse, managers will face a major challenge in understanding how to manage diversity. One of many decisions to be made is whether an

organization should offer diversity training and, if so, what topics and issues should be addressed based on the organizational goals.

There has been a debate over the effectiveness of corporate diversity training since the Civil Rights Act of 1964 helped prompt corporate diversity training with the organizational goal of simply being compliant with the law. Prior research shows that it can be effective, ineffective, or even detrimental for employees, but as diversity training has evolved through the years, it has become an important factor in helping employers manage diversity.

In the 1980s through the late 1990s, diversity training evolved from focusing solely on compliance to addressing the needs of women and minorities as they entered the workforce at a faster rate. Unfortunately, this type of training was perceived by White people and men as singling them out as the problem; sometimes such training was even formatted as "confession" sessions for White employees to express their complicity in institutional racism. Not unexpectedly, this type of training would often backfire and would further separate employees from each other, the exact opposite of its intention.

Recently, diversity training has evolved to focus on (1) building cultural competencies regarding fellow employees, (2) valuing differences, and (3) learning how diversity helps make better business decisions. This perspective toward diversity training is more effective than simply focusing on causes of a lack of diversity and the historical roots of discrimination. Understanding how to comply with the law is still important, but training has a greater effect when the other factors are also included.

A recent study investigated various diversity-training methods, including having participants engage in activities on perspective taking and goal setting. For perspective-taking activities, participants were asked to write a few sentences about the challenges they believed minority group members might experience. Goal-setting activities involved writing specific and measurable goals related to workplace diversity such as crafting future policies or engaging in future behaviors. Researchers found that when these activities were used as a diversity-training method, pro-diversity attitudes and behavioral intentions persisted months later.

Issues regarding employee sexual orientation have also been introduced into corporate diversity training in recent years. Because employees' religious beliefs are protected by Title VII of the Civil Rights Act, employers should be sensitive to balancing the rights of lesbian, gay, bisexual, and transgender employees and employees' religious rights. Attempting to protect the rights of one group and not be perceived to disrespect another is a difficult situation for managers. In order to mitigate any backlash from some employees, employers should seek feedback from all groups to learn the best ways to accommodate them, and should assess the organizational climate. Additionally, managers should explain how diversity based on sexual orientation aligns with the company's strategic objectives and explain the company's legal position with supportive reasoning. Lastly, based on their organizational climate and how it reshapes itself over time, some companies may wish to address diversity training on sexual orientation, gender identity, and gender expression in training separate from other diversity issues.

Sources: Young, Cheri A., Badiah Haffejee, and David L. Corsun. "Developing Cultural Intelligence and Empathy Through Diversified Mentoring Relationships." *Journal of Management Education* (2017): 1052562917710687; Bezrukova, K., Jehn, K.A., & Spell, C.S. (2012). Reviewing diversity training: Where we have been and where we should go. *Academy of Management Learning & Education*, 11 (2): 207-227; Anand, R., & Winters, M. (2008). A retrospective view of corporate diversity training from 1964 to the present. *Academy of Management Learning & Education*, 7 (3): 356-372; Lindsey, A., King, E., Membere, A., & Cheung, H.K. (July 28, 2017). Two types of diversity training that really work. *Harvard Business Review*.

Discussion Questions

1. Why do you believe diversity training is resisted by some employees?
2. Do you believe there will always be a need for workplace diversity training?
3. How would you determine what types of diversity training are needed at your company?

Visible Leadership

Another key to ensure that employees are treated fairly is utilizing appropriate leadership strategies. Leadership must sincerely value variety of opinions, and organizational culture must encourage openness and make workers feel valued. Organizations must also have a well-articulated and widely understood mission and a relatively egalitarian, non-bureaucratic structure. Having such a work environment will ensure that the attitudes and values of employees are aligned with those of the organization. In this way, culture serves as a control mechanism for shaping behaviors.

Strategies for Employees

Individuals can increase positive employment outcomes by obtaining high levels of education, because for all groups education is a predictor of employment and increased earnings. Individuals can also seek employment in larger firms, which are more likely to have formal hiring programs and specific diversity provisions in place. Individuals of any race or ethnic background can also take steps to eliminate discrimination by being aware of their own personal stereotypes or biases and taking steps to challenge and address them.

CONCEPT CHECK

1. How can managers ensure fairness in the interviewing and selection process regarding diversity?
2. What is the role of leadership regarding diversity?

1.9: Key Terms

KEY TERMS

access discrimination
: A catchall term that describes when people are denied employment opportunities because of their identity group or personal characteristics such as gender, race, or age.

access-and-legitimacy perspective
: Focuses on the benefits that a diverse workforce can bring to a business that wishes to operate within a diverse set of markets or with culturally diverse clients.

age discrimination
: Treating an employee or applicant less favorably due to their age.

Age Discrimination in Employment Act (ADEA)
: Forbids discrimination against individuals who are age 40 and above, including offensive or derogatory remarks that create a hostile work environment.

Americans with Disabilities Act (ADA)
: Prohibits discrimination in employment, public services, public accommodations, and telecommunications against people with disabilities.

cognitive diversity
: Differences between team members regarding characteristics such as expertise, experiences, and perspectives.

cognitive diversity hypothesis
: Multiple perspectives stemming from the cultural differences between group or organizational members result in creative problem-solving and innovation.

covert discrimination (interpersonal)
: An interpersonal form of discrimination that manifests in ways that are not visible or readily identifiable.

deep-level diversity
: Diversity in characteristics that are nonobservable such as attitudes, values, and beliefs, such as religion.

disability discrimination
: Occurs when an employee or applicant is treated unfavorably due to their physical or mental disability.

discrimination-and-fairness perspective
: A culturally diverse workforce is a moral duty that must be maintained in order to create a just and fair society.

diversified mentoring relationships
: Relationships in which the mentor and the mentee differ in terms of their status within the company and within larger society.

diversity
: Identity-based differences among and between people that affect their lives as applicants, employees, and customers.

Equal Employment Opportunity Commission
: An organization that enforces laws and issues guidelines for employment-related treatment according to Title VII of the Civil Rights Act of 1964.

Equal Pay Act of 1963
: An amendment to the Fair Labor Standards Act of 1938.

Family and Medical Leave Act (FMLA)

Provides new parents, including adoptive and foster parents, with 12 weeks of unpaid leave (or paid leave only if earned by the employee) to care for the new child and requires that nursing mothers have the right to express milk on workplace premises.

glass ceiling

An invisible barrier based on the prejudicial beliefs of organizational decision makers that prevents women from moving beyond certain levels within a company.

groupthink

A dysfunction in decision-making that is common in homogeneous groups due to group pressures and group members' desire for conformity and consensus.

harassment

Any unwelcome conduct that is based on characteristics such as age, race, national origin, disability, gender, or pregnancy status.

hidden diversity

Differences in traits that are deep-level and may be concealed or revealed at discretion by individuals who possess them.

highly structured interviews

Interviews that are be structured objectively to remove bias from the selection process.

identity group

A collective of individuals who share the same demographic characteristics such as race, sex, or age.

inclusion

The degree to which employees are accepted and treated fairly by their organization.

integration-and-learning perspective

Posits that the different life experiences, skills, and perspectives that members of diverse cultural identity groups possess can be a valuable resource in the context of work groups.

invisible social identities

Membership in an identity group based on hidden diversity traits such as sexual orientation or a nonobservable disability that may be concealed or revealed.

justification-suppression model

Explains under what conditions individuals act on their prejudices.

managing diversity

Ways in which organizations seek to ensure that members of diverse groups are valued and treated fairly within organizations.

model minority myth

A stereotype that portrays Asian men and women as obedient and successful and is often used to justify socioeconomic disparities between other racial minority groups.

national origin discrimination

Treating someone unfavorably because of their country of origin, accent, ethnicity, or appearance.

passing

The decision to not disclose one's invisible social identity.

pregnancy discrimination

Treating an employee or applicant unfairly because of pregnancy status, childbirth, or medical conditions related to pregnancy or childbirth.

Pregnancy Discrimination Act (PDA)

Prohibits any discrimination as it relates to pregnancy in hiring, firing, compensation, training, job assignment, insurance, or any other employment conditions.

race/color discrimination

Treating employees or applicants unfairly because of their race or because of physical characteristics typically associated with race such as skin color, hair color, hair texture, or certain facial features.

religious discrimination

When employees or applicants are treated unfairly because of their religious beliefs.

resource-based view

Demonstrates how a diverse workforce can create a sustainable competitive advantage for organizations.

revealing

The decision to disclose one's invisible social identity.

reverse discrimination

Describes a situation in which dominant group members perceive that they are experiencing discrimination based on their race or sex.

schema theory

Explains how individuals encode information about others based on their demographic characteristics.

sex-based discrimination

When employees or applicants are treated unfairly because of their sex, including unfair treatment due to gender, transgender status, or sexual orientation.

sexual harassment

Harassment based on a person's sex; it can (but does not have to) include unwanted sexual advances, requests for sexual favors, or physical and verbal acts of a sexual nature.

similarity-attraction paradigm

Individuals' preferences for interacting with others like themselves can result in diversity having a negative effect on group and organizational outcomes.

social identity theory

Self-concept based on an individual's physical, social, and mental characteristics.

stereotypes

Overgeneralization of characteristics about groups that are the basis for prejudice and discrimination.

strategic human resources management (SHRM)

System of activities arranged to engage employees in a manner that assists the organization in achieving a sustainable competitive advantage.

surface-level diversity

Diversity in the form of characteristics of individuals that are readily visible, including, but not limited to, age, body size, visible disabilities, race, or sex.

treatment discrimination

A situation in which people are employed but are treated differently while employed, mainly by receiving different and unequal job-related opportunities or rewards.

work visa

A temporary documented status that authorizes individuals from other countries to permanently or temporarily live and work in the United States.

workplace discrimination

Unfair treatment in the job hiring process or at work that is based on the identity group, physical or mental condition, or personal characteristic of an applicant or employee.

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1.10: Summary of Learning Outcomes

1.2 An Introduction to Workplace Diversity

1. What is diversity?

Diversity refers to identity-based differences among and between people that affect their lives as applicants, employees, and customers. Surface-level diversity represents characteristics of individuals that are readily visible, including, but not limited to, age, body size, visible disabilities, race, or sex. Deep-level diversity includes traits that are non-observable such as attitudes, values, and beliefs. Finally, hidden diversity includes traits that are deep-level but may be concealed or revealed at the discretion of individuals who possess them.

1.3 Diversity and the Workforce

2. How diverse is the workforce?

In analyzing the diversity of the workforce, several measures can be used. Demographic measures such as gender and race can be used to measure group sizes. Measures of such things as discrimination toward specific groups can be analyzed to gauge the diversity of the workforce. Other measures of diversity in the workforce can include examination of differences in age and sexual orientation.

1.4 Diversity and Its Impact on Companies

3. How does diversity impact companies and the workforce?

The demography of the labor force is changing in many ways as it becomes racially diverse and older and includes more women and individuals with disabilities. Diversity affects how organizations understand that employing people who hold multiple perspectives increases the need to mitigate conflict between workers from different identity groups, enhances creativity and problem-solving in teams, and serves as a resource to create a competitive advantage for the organization.

1.5 Challenges of Diversity

4. What is workplace discrimination, and how does it affect different social identity groups?

Workplace discrimination occurs when an employee or an applicant is treated unfairly at work or in the job-hiring process due to an identity group, condition, or personal characteristic such as age, race, national origin, sex, disability, religion, or pregnancy status. The Equal Employment Opportunity Commission enforces laws and legislation related to individuals with those protected statuses.

Harassment is any unwelcome conduct that is based on the protected characteristics listed above. Sexual harassment refers specifically to harassment based on a person's sex, and it can (but does not have to) include unwanted sexual advances, requests for sexual favors, or physical and verbal acts of a sexual nature.

1.6 Key Diversity Theories

5. What key theories help managers understand the benefits and challenges of managing the diverse workforce?

The cognitive-diversity hypothesis suggests that multiple perspectives stemming from the cultural differences between groups or organizational members result in creative problem solving and innovation. The similarity-attraction paradigm and social identity theory explain how, because individuals prefer to interact with others like themselves, diversity may have a negative effect on group and organizational outcomes. The justification-suppression model explains under what conditions individuals act on their prejudice.

1.7 Benefits and Challenges of Workplace Diversity

6. How can managers reap benefits from diversity and mitigate its challenges?

By approaching diversity and diversity issues in a thoughtful, purposeful way, managers can mitigate the challenges posed by a diverse workforce and enhance the benefits a diverse workforce can offer.

Managers can work to make sure that the efforts and initiatives they enact to increase diversity in the workplace come from a perspective that ensures and strives for equity and fairness, not simply one that will benefit the company's bottom line.

Using an integration-and-learning perspective strongly links diversity to the work and success of the firm by viewing cultural identity, different life experiences, skills, and perspectives from members of diverse cultural identity groups as a valuable resource.

1.8 Recommendations for Managing Diversity

7. What can organizations do to ensure applicants, employees, and customers from all backgrounds are valued?

Organizations should use objective and fair recruitment and selection tools and policies.

Leadership should make employees feel valued, be open to varied perspectives, and encourage a culture of open dialogue. Women and racial minorities can increase positive employment outcomes by pursuing higher levels of education and seeking employment in larger organizations. All individuals should be willing to listen, empathize with others, and seek to better understand sensitive issues that affect different identity groups.

1.11: Chapter Review Questions

CHAPTER REVIEW QUESTIONS

1. Define the three types of diversity and compare them using examples for each type.
2. How are demographics of the workforce changing?
3. What are some major challenges that women face in organizations?
4. What is the model minority myth? How does it compare to how Black people and Hispanic people are stereotyped?
5. What are some benefits of hiring older workers?
6. Why would an employee “pass” or “reveal” at work? What are the positive and negative consequences of doing so?
7. Explain the six benefits of workplace diversity described by Cox and Blake’s business case for diversity.
8. Compare how the cognitive diversity hypothesis and the similarity-attraction paradigm relate to diversity outcomes.
9. Based on the justification-suppression model, explain why individuals act on their prejudicial beliefs.
10. Describe challenges that managers must face when managing diversity.
11. How can employees ensure they are compliant with the laws and legislation enforced by the EEOC?
12. What are some recommendations for managing diversity?

1.12: Management Skills Application Exercises

MANAGEMENT SKILLS APPLICATION EXERCISES

1. Do you agree that diversity can be a source of greater benefit than harm to organizations? Why or why not?
2. Have you ever worked in a diverse team setting before? If so, did you encounter any attitudes or behaviors that could potentially cause conflict? If not, how would you manage conflict stemming from diversity?
3. List three organizational goals you would implement to create an organizational culture of diversity and inclusion.
4. Have you or has someone you know experienced discrimination? How did that affect you or that person emotionally, physically, or financially?
5. Pick an identity group (e.g., gay, Black, or woman) other than your own. Imagine and list the negative experiences and interactions you believe you might encounter at work. What policies or strategies could an organization implement to prevent those negative experiences from occurring?
6. Provide a concrete example of how different perspectives stemming from diversity can positively impact an organization or work group. You may use a real-life personal example or make one up.

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1.13: Managerial Decision Exercises

MANAGERIAL DECISION EXERCISES

1. As a manager for a hospital, you oversee a staff of marketing associates. Their job is to find doctors and persuade them to refer their patients to your hospital. Associates have a very flexible work schedule and manage their own time. They report to you weekly concerning their activities in the field. Trusting them is very important, and it is impossible to track and confirm all of their activities. Your assistant, Nancy, manages the support staff for the associates, works very closely with them, and often serves as your eyes and ears to keep you informed as to how well they are performing.

   One day, Nancy comes into your office crying and tells you that your top-performing associate, Susan, has for the past few weeks repeatedly asked her out to dinner and she has repeatedly refused. Susan is a lesbian and Nancy is not. Today, when she refused, Susan patted her on the bottom and said, "I know, you are just playing hard to get."

   After Nancy calms down, you tell her that you will fill out the paperwork to report a sexual harassment case. Nancy says that she does not want to report it because it would be too embarrassing if word of the incident got out. To impress upon you how strongly she feels, she tells you that she will consider resigning if you report the incident. Nancy is essential to the effective operation of your group, and you dread how difficult it would be to get things done without her assisting you.

   What do you do? Do you report the case, lose Nancy's trust, and jeopardize losing a high-performing employee? Or do you not report it, thereby protecting what Nancy believes to be her right to privacy?

2. Recently your company has begun to promote its diversity efforts, including same-sex (and heterosexual) partner benefits and a nonharassment policy that includes sexual orientation, among other things. Your department now has new posters on the walls with photos of employees who represent different aspects of diversity (e.g., Black, Hispanic, gay). One of your employees is upset about the diversity initiative and has begun posting religious scriptures condemning homosexuality on his cubicle in large type for everyone to see. When asked to remove them, your employee tells you that the posters promoting diversity offend some religious employees. What should you do?
3. You are a recently hired supervisor at a paper mill factory. During your second week on the job, you learn about a White employee who has been using a racial slur during lunch breaks when discussing some of her Black coworkers with others. You ask the person who reported it to you about the woman and learn that she is an older woman, around 67 years old, and has worked at the factory for more than 40 years. You talk to your boss about it, and he tells you that she means no harm by it, she is just from another era and that is just her personality. What would you do in this situation?
4. You are a nurse manager who oversees the triage for the emergency room, and today is a slow day with very few patients. During the downtime, one of your subordinates is talking with another coworker about her new boyfriend. You observe her showing her coworkers explicit images of him that he emailed her on her phone. Everyone is joking

and laughing about the ordeal. Even though it appears no one is offended, should you address it? What would you say?

5. You work for a company that has primarily Black and Hispanic customers. Although you employ many racial minorities and women, you notice that all of your leaders are White men. This does not necessarily mean that your organization engages in discriminatory practices, but how would you know if your organization was managing diversity well? What information would you need to determine this, and how would you collect it?
6. Your company's founder believes that younger workers are more energetic and serve better in sales positions. Before posting a new job ad for your sales division, he recommends that you list an age requirement of the position for applicants between ages 18 and 25. Is his recommendation a good one? Why or why not?
7. You work for a real estate broker who recently hired two gay realtors, Steven and Shauna, to be a part of the team. During a staff meeting, your boss mentions an article she read about gay clients feeling ostracized in the real estate market. She tells the new employees she hired them to help facilitate the home-buying process for gay buyers and sellers. She specifically instructs them to focus on recruiting gay clients, even telling them that they should pass along any straight customers to one of the straight realtors on the team. A few weeks later, Shauna reports that she has made her first sale to a straight couple that is expecting a baby. During the next staff meeting, your boss congratulates Shauna on her sale, but again reiterates that Shauna and Steven should pass along straight clients to another realtor so they can focus on recruiting gay clients. After the meeting, Shauna tells you that she thinks it is unfair that she should have to focus on gay clients and that she is thinking of filing a discrimination complaint with HR. Do you think that Shauna is correct in her assessment of the situation? Is there merit to your boss's desire to have the gay realtors focus on recruiting gay clients? What might be a better solution to help gay clients feel more comfortable in the home-buying and -selling process?

1.14: Critical Thinking Case

UBER PAYS THE PRICE

Nine years ago, Uber revolutionized the taxi industry and the way people commute. With the simple mission "to bring transportation—for everyone, everywhere," today Uber has reached a valuation of around $70 billion and claimed a market share high of almost 90% in 2015. However, in June 2017 Uber experienced a series of bad press regarding an alleged culture of sexual harassment, which is what most experts believe caused their market share to fall to 75%.

In February of 2017 a former software engineer, Susan Fowler, wrote a lengthy post on her website regarding her experience of being harassed by a manager who was not disciplined by human resources for his behavior. In her post, Fowler wrote that Uber's HR department and members of upper management told her that because it was the man's first offense, they would only give him a warning. During her meeting with HR about the incident, Fowler was also advised that she should transfer to another department within the organization. According to Fowler, she was ultimately left no choice but to transfer to another department, despite having specific expertise in the department in which she had originally been working.

As her time at the company went on, she began meeting other women who worked for the company who relayed their own stories of harassment. To her surprise, many of the women reported being harassed by the same person who had harassed her. As she noted in her blog, "It became obvious that both HR and management had been lying about this being his 'first offense.'" Fowler also reported a number of other instances that she identified as sexist and inappropriate within the organization and claims that she was disciplined severely for continuing to speak out. Fowler eventually left Uber after about two years of working for the company, noting that during her time at Uber the percentage of women working there had dropped to 6% of the workforce, down from 25% when she first started.

Following the fallout from Fowler's lengthy description of the workplace on her website, Uber's chief executive Travis Kalanick publicly condemned the behavior described by Fowler, calling it "abhorrent and against everything Uber stands for and believes in." But later in March, Uber board member Arianna Huffington claimed that she believed "sexual harassment was not a systemic problem at the company." Amid pressure from bad media attention and the company's falling market share, Uber made some changes after an independent investigation resulted in 215 complaints. As a result, 20 employees were fired for reasons ranging from sexual harassment to bullying to retaliation to discrimination, and Kalanick announced that he would hire a chief operating officer to help manage the company. In an effort to provide the leadership team with more diversity, two senior female executives were hired to fill the positions of chief brand officer and senior vice president for leadership and strategy.

Sources: Uber corporate Website, https://www.uber.com/newsroom/company-info/ (February, 2017); Marco della Cava, "Uber has lost market share to Lyft during crisis," *USA Today*, June 13, 2017, https://www.usatoday.com/story/tech/...als/102795024/; Tracey Lien, "Uber fires 20 workers after harassment investigation," *Los Angeles Times*, Jun 6, 2017, http://www.latimes.com/business/la-f...606-story.html; Susan Fowler, "Reflecting On One

Very, Very Strange Year At Uber," February 19, 2017, https://www.susanjfowler.com/blog/20...e-year-at-uber.

Critical Thinking Questions

1. Based on Cox's business case for diversity, what are some positive outcomes that may result in changes to Uber's leadership team?
2. Under what form of federal legislation was Fowler protected?
3. What strategies should have been put in place to help prevent sexual harassment incidents like this from happening in the first place?

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1.15: Video: How to Get Serious About Diversity and Inclusion in the Workplace

Imagine a workplace where people of all colors and races are able to climb every rung of the corporate ladder -- and where the lessons we learn about diversity at work actually transform the things we do, think and say outside the office. How do we get there? In this candid talk, inclusion advocate Janet Stovall shares a three-part action plan for creating workplaces where people feel safe and expected to be their unassimilated, authentic selves.

https://www.youtube.com/watch?v=kvdHqS3ryw0

1.15: Video: How to Get Serious About Diversity and Inclusion in the Workplace is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

1.16: Video: How to Foster True Diversity and Inclusion at Work (and in Your Community)

When companies think of diversity and inclusion, they too often focus on meeting metrics instead of building relationships with people of diverse backgrounds, says Starbucks COO Rosalind G. Brewer. In this personable and wide-ranging conversation with TED current affairs curator Whitney Pennington Rodgers, Brewer invites leaders to rethink what it takes to create a truly inclusive workplace -- and lays out how to bring real, grassroots change to boardrooms and communities alike.

https://www.youtube.com/watch?v=klXVQsbhFsE

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2.1: Why It Matters: Diversity in the Workplace

Why learn about anti-discriminatory laws and methods to develop and support a diverse workforce?

We are a nation founded on principles of equality. However, the promise of "liberty and justice for all" in our constitution wasn't initially the egalitarian commitment that it has been interpreted to be over time—it was initially written about all white men. In order to understand the present, we need to understand our history and, in particular, to look beyond stated intent to observe the practical impact of legislation, policy, and practices.

We've come a long way in our quest for a diverse workforce. And yet, we still have a long way to go. As we've evolved as humans we've developed a mental shorthand to help us make decisions. Based on our experience and social conditioning, we make assumptions that codify into beliefs that drive our behaviors—often unconsciously. These collective assumptions and beliefs have over time become entrenched in business practices and policies.

LEARN MORE

For perspective on how this happens—and the need for change—watch Helen Turnbull's TED Talk titled "Inclusion, Exclusion, Illusion and Collusion."

A YouTube element has been excluded from this version of the text. You can view it online here: https://www.youtube.com/watch?v=zdV8OpXhl2g.

You can also download a transcript for the video "Inclusion, Exclusion, Illusion and Collusion."

Key quote from this talk: "The unchallenged brain is not worth trusting."

The problem with these default behaviors and associated practices is that they no longer serve as well (if, indeed, they ever did). In fact, there is a business penalty and human cost to maintaining these practices. With demographic trends, increased employee advocacy, and global interconnectedness, a failure to embrace diversity will constitute not only a competitive risk, but a risk of sustainability.

Diversity isn't just a women's or minority issue. Educational technology company Instructure senior vice president Jeff Weber observes that "more and more, when we're interviewing, candidates are asking what we're doing about diversity and inclusion. And it's not just diverse talent themselves, and it's not just millennials or Generation Z—we're hearing this from white, straight men in the Midwestern United States." Organizational transformation consultants SYPartners associate principal Sabrina Clark notes that "companies that lack diversity are being called out publicly, and may even be losing business, not to mention falling behind when it comes to recruiting." She observes that companies that make diversity and inclusion a business priority understand the brand implications, noting that "they're thinking . . . about what kind of company they are, who they want to be and what their legacy will be." Diversity and inclusion

isn’t just an HR initiative, it’s a strategic imperative. In this module, we’ll discuss diversity and inclusion—what it is, the business case, challenges, best practices, and emerging trends.

2.1: Why It Matters: Diversity in the Workplace is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

2.2: Introduction to Legislation

What you'll learn to do: Summarize the legislation regarding employment discrimination

Equal opportunity is one of our nation's core values and should be a core company policy. In this section, we'll summarize employment discrimination legislation and highlight interpretation and enforcement changes.

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2.3: The Law and Discrimination

Learning Objectives

1. Describe the laws designed to prevent bias and discrimination in hiring

A SHRM article emphasizes: "Discrimination costs employers millions of dollars every year, not to mention the countless hours of lost work time, employee stress and the negative public image that goes along with a discrimination lawsuit." Equal employment opportunity isn't just the right thing to do, it's the law. Specifically, it's a series of federal laws and Executive Orders designed to eliminate employment discrimination. Illegal discrimination is the practice of making employment decisions such as hiring, compensation, scheduling, performance evaluation, promotion, and firing based on factors unrelated to performance. There are currently nine categories protected under federal law: age, disability, genetic information, national origin, pregnancy, race and color, religion, and sex. Although the final category is being disputed (more on this later), the EEOC currently interprets "sex" to include gender, sexual orientation, and gender identity.

Employment discrimination laws and regulations are enforced by the Equal Employment Opportunity Commission (EEOC), an agency established by the Civil Rights Act of 1964 (Title VII). The agency's mission is to stop and remedy unlawful employment discrimination. Specifically, the EEOC is charged with "enforcing protections against employment discrimination on the bases of race, color, national origin, religion, and sex." Congress has expanded the agency's jurisdiction over the years and the EEOC is now responsible for enforcing the Equal Pay Act of 1963 (APA), the Age Discrimination in Employment Act of 1967 (ADEA), Section 501 of the Rehabilitation Act of 1973, Titles I and V of the Americans with Disabilities Act of 1990 (ADA), and Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA). In 1972, Congress expanded Title VII protections to include federal government employees and granted the EEOC authority to pursue independent litigation against private employers under Title VII. Note that state and local laws may provide broader discrimination protections. If in doubt, contact your state department of labor for clarification.

PRACTICE QUESTION

You are preparing a briefing on discrimination law for new managers and supervisors. You want to start with a big picture view. Which of the following would best serve that purpose?

- Discrimination protections legislation is applicable to all employment decisions.
- There are currently 5 protected categories: age, race, religion, gender, and disability.
- Discrimination legislation is more of a suggestion than a requirement.
- Discrimination protections apply only to the hiring process.

Answer

Discrimination protections legislation is applicable to all employment decisions.

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2.4: Anti-Discrimination Legislation

Learning Objectives

1. Summarize the discrimination protections provided by Title VII of the Civil Rights Act of 1964
2. Summarize the discrimination protections provided by the Civil Rights Act of 1991
3. Identify additional laws & executive orders regarding discrimination

The Civil Rights Act of 1964

History.com notes that "The Civil Rights Act of 1964, which ended segregation in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin, is considered one of the crowning legislative achievements of the civil rights movement." Indeed, civil rights leader Martin Luther King, Jr. referred to the Act as a "second emancipation." The Act was originally proposed by President John F. Kennedy, who stated, "The United States 'will not be fully free until all of its citizens are free.'" Despite strong opposition from southern Congressional members, including a record 75-day filibuster and a 14-hour speech by former Ku Klux Klan member and West Virginia Senator Robert Byrd, the Act passed and was signed into law by President Kennedy's successor, Lyndon B. Johnson.

Fundamentals of Human Resource Management authors DeCenzo, et.al. also state that "no single piece of legislation has had a greater effect on reducing employment discrimination than the Civil Rights Act of 1964." For Human Resource Management purposes, the section or "title" of the Act that's particularly relevant is Title VII, which, as amended, "protects individuals against employment discrimination on the basis of race and color as well as national origin, sex, or religion." Title VII makes it unlawful to discriminate against any employee or applicant for employment because of race or color in regard to hiring, termination, promotion, compensation, job training, or any other term, condition, or privilege of employment. Title VII prohibits not only intentional discrimination but also neutral policies that disproportionately exclude minorities and are not job-related. Title VII is applicable to private sector employers with fifteen or more employees, federal government employers, employment agencies, and labor organizations.

Title VII also prohibits employment decisions based on stereotypes and assumptions about abilities, traits, or the performance of individuals of certain racial groups. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. Finally, the law requires employers to make reasonable accommodations for applicants' and employees' sincerely held religious practices, unless doing so would impose an undue hardship on the operation of the employer's business.

Title VII Exceptions

An employer is permitted to take employment actions that would otherwise be held as discriminatory if the decision is based on a bona fide occupational qualification (BFOQ). Workforce states that "Title VII of the Civil Rights Act of 1964 provides that employment decisions may be made on the basis of sex, religion, or national origin (but not race or color) if the sex, religion, or national origin is a BFOQ reasonably necessary to the normal operation of

the business. The Age Discrimination in Employment Act of 1967 contains a similar provision for the BFOQ exception in regard to age."

To be applicable, a BFOQ exception must meet two conditions: (1) A particular religion, sex, national origin or age must be an actual qualification for performing the job; and (2) the requirement must be necessary to the normal operation of the employer's business. The same exception is allowed for job notices and advertisements, where the position at issue requires a worker of a particular religion, sex, national origin, or age. For example, Civil.laws.com notes that "it would not be a violation of Title VII for a Jewish center to refuse employment to a Catholic individual in a shul or school funded by the congregation if the employment required a statement of adherence to and promulgation of Judaism or the Jewish faith.

LEARN MORE

For additional perspective, refer to **Cornell Law School's discussion of BFOQ**.

Civil Rights Act of 1991

The Civil Rights Act of 1991 was passed to address a series of decisions by the Supreme Court that undermined discrimination protections. In effect, the law nullified these decisions, re-establishing an employer's burden of proof and the disparate impact theory of discrimination. The Act also amended "Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases." Specifically, "the Act provided that where the plaintiff shows that discrimination was a motivating factor for an employment decision, the employer is liable for injunctive relief, attorney's fees, and costs (but not individual monetary or affirmative relief) even though it proves it would have made the same decision in the absence of a discriminatory motive."

The Act also extended employment discrimination protection to employees of Congress and Title VII and ADA coverage to include American and American-controlled employers operating abroad.

PRACTICE QUESTIONS

1. You are preparing a briefing on discrimination law for new managers and supervisors. Your specific focus is Title VII of the Civil Rights Act of 1964. Which of the following is best summarizes the protections in the original Act?
    - Title VII of the Civil Rights Act of 1964 re-establishes discrimination protections eroded by a series of Supreme Court decisions.
    - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, religion, or gender.
    - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, gender, and national origin.
    - Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, and national origin.

2. Which of the following best summarizes the protections provided in the 1991 version of the Civil Rights Act?
    - The Civil Rights Act of 1991 expanded protected categories to include gender identity and sexual orientation.
    - The Civil Rights Act of 1991 established the ability to file suit and receive compensatory and punitive damage awards in international discrimination cases.
    - The Civil Rights Act of 1991 clarified that employment discrimination protection applies only to employees working in the United States.
    - The Civil Rights Act of 1991 established that employees have the burden of proof in employment discrimination cases.

Answer

1. Title VII of the Civil Rights Act of 1964 prohibits discrimination based on race, color, religion, sex, and national origin.
2. The Civil Rights Act of 1991 established the ability to file suit and receive compensatory and punitive damage awards in international discrimination cases.

The Equal Pay Act (APA) of 1963

The Equal Pay Act (APA) of 1963 makes it illegal to pay different wages to men and women if they perform equal work in the same workplace. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The Age Discrimination in Employment Act (ADEA) of 1976

ADEA protects applicants and employees 40 years or older from discrimination because of age and for retaliation for a discrimination complaint or related action. ADEA applies to private employers with 20 or more employees, state and local governments, employment agencies, labor organizations, and the federal government. As mentioned above, it is generally unlawful to state an age-related preference in job advertisements except when age is demonstrated to be a BFOQ. In a Recruitment & Selection training manual, SHRM recommends cross-referencing state's discrimination laws, noting that "some states require compliance with age discrimination law for employers of two or more workers, and some states have lowered the age discrimination threshold far below 40 years old."

The Pregnancy Discrimination Act of 1978

The Pregnancy Discrimination Act of 1978 is an amendment to Title VII of the Civil Rights Act. The Act makes it illegal to discriminate against a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. SHRM notes that "the basic principle is that a woman affected by pregnancy or other related medical condition must be treated the same as any other applicant in the recruitment and selection process." The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Title I of the Americans with Disabilities Act (ADA) of 1990

Title I makes it illegal to discriminate against a qualified person with a disability in the private sector and in state and local governments. The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit. The law also requires that employers reasonably accommodate the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless doing so would impose an undue hardship on the operation of the employer's business. SHRM expands on the EEOC description, stating that "employers are prohibited from using an employment test to disqualify a disabled candidate unless that test is valid for the skills necessary in the job to which they are applying and unless the same test is given to all applicants, not just to those with disabilities." Sections 501 and 505 of the Rehabilitation Act of 1973 extend ADA Title I protections to federal government applicants and employees.

The Genetic Information Nondiscrimination Act (GINA) of 2008

GINA makes it illegal to discriminate against employees or applicants because of genetic information. Genetic information includes information about an individual's genetic tests and the genetic tests of an individual's family members, as well as information about any disease, disorder, or condition of an individual's family members (i.e. an individual's family medical history). The law also makes it illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Note

SHRM's caution regarding differences in state and local versus federal laws applies across the board, and state/local laws are generally more stringent. HR personnel are advised to contact the relevant state department of labor to confirm the extent of specific employment laws and to develop a process to remain up to date on changes.

Executive Orders

Executive orders generally extend discrimination protections to federal workers, including those working under federal contracts.

- **Executive Order (E.O.) 11246.** Issued by President Lyndon B. Johnson, prohibits federal contractors from discriminating "against any employee or applicant for employment because of race, color, religion, sex, or national origin." Amended by President Obama (E.O. 13672) to extend protection to include sexual orientation or gender identity.
- **E.O. 11478.** Issued by President Nixon, bars discrimination against federal employees on the basis of race, color, religion, sex, national origin, disability, and age. Amended by President Clinton (E.O 13087) to include sexual orientation as a protected category. Amended by President Obama (E.O. 13672) to extend protection to include gender identity as a protected category.

PRACTICE QUESTION

You are discussing an incident of alleged age discrimination with a manager. The manager states that his employment action can't be considered age discrimination since the affected employee is only 40. How should you respond?

- A person can't be charged with age discrimination if they are older than the affected employee.
- It can be considered age discrimination since the protected age is 50 or older.
- If there is a perception of discrimination, it doesn't matter what the person's age is.
- It can be considered age discrimination since the protected age is 40 or older.

Answer

- It can be considered age discrimination since the protected age is 40 or older.

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2.5: Supreme Court Cases

Learning Objectives

1. Summarize key Supreme Court cases regarding discrimination

As we saw with the passage of the Civil Rights Act of 1991, "justice"—at whatever level—is not always blind (or fair) and we may be entering another phase of regressive judicial activism with the recent appointments of conservatives Neil Gorsuch and Brett Kavanaugh to the bench. However, the Court has also contributed to diversity and preventing discrimination and, equally importantly, clarifying what is permissible under the law. Here are a few key discrimination decisions drawn from the EEOC's list of Selected Supreme Court Decisions.

Phillips v. Marin Marietta Corp. (1971)

The Supreme Court holds that Title VII's prohibition against sex discrimination means that employers cannot discriminate on the basis of sex plus other factors such as having school-age children. In practical terms, EEOC's policy forbids employers from using one hiring policy for women with small children and a different policy for males with children of a similar age.

Griggs v. Duke Power Co. (1971)

The Supreme Court decides that where an employer uses a neutral policy or rule, or utilizes a neutral test, and this policy or test disproportionately affects minorities or women in an adverse manner, then the employer must justify the neutral rule or test by proving it is justified by business necessity. The Court reasons that Congress directed the thrust of Title VII to the consequences of employment practices, not simply the motivation. This decision paves the way for EEOC and charging parties to challenge employment practices that shut out groups if the employer cannot show the policy is justified by business necessity.

Espinoza v. Farah Manufacturing Co. (1973)

The Supreme Court holds that non-citizens are entitled to Title VII protection and states that a citizenship requirement may violate Title VII if it has the purpose or effect of discriminating on the basis of national origin.

Alexander v. Gardener-Denver Co. (1974)

The Supreme Court rules that an employee who submits a discrimination claim to arbitration under a collective bargaining agreement is not precluded from suing his or her employer under Title VII. The court reasons that the right to be free of unlawful employment discrimination is a statutory right and cannot be bargained away by the union and employer.

UAW v. Johnson Controls (1991)

The Supreme Court addresses the issue of fetal hazards. In this case, the employer barred women of childbearing age from certain jobs due to potential harm that could occur to a fetus. The Court rules that the employer's restriction against fertile women performing "dangerous jobs" constitutes sex discrimination under Title VII. The Court further rules that the employer's fetal protection policy could be justified only if being able to bear children was a bona fide occupational qualification (BFOQ) for the job. The fact that the job posed risk to fertile women does not justify barring all fertile women from the position.

Oncale v. Sundowner Offshore Services (1998)

In a unanimous decision, the Supreme Court rules that sex discrimination consisting of same-sex sexual harassment is actionable under Title VII. The Court reiterates that the plaintiff must prove that there was discrimination because of sex and that the harassment was severe.

PRACTICE QUESTION

You are researching discrimination-related Supreme Court cases to incorporate in a discrimination training program. Which of the following is a clarification based on Supreme Court decisions that you may want to include?

- Only citizens are entitled to Title VII protection based on national origin.
- An employer can prohibit women of childbearing age from certain jobs due to potential harm that could occur to a fetus.
- Sexual harassment is only actionable under Title VII if it consists of male-female harassment.
- Sexual harassment is actionable under Title VII if it consists of either opposite sex or same-sex harassment.

Answer

- Sexual harassment is actionable under Title VII if it consists of either opposite sex or same-sex harassment.

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2.6: Interpreting the Law

Learning Objectives

1. Discuss changing interpretations of legal protections of diversity

As illustrated above, laws are subject to interpretation—both expansion and contraction. For example, an EEOC notice emphasizes that their interpretation of the Title VII reference to "sex" is broadly applicable to gender, gender identity, and sexual orientation. And further, that "these protections apply regardless of any contrary state or local laws." This interpretation is consistent with Executive Orders issued by the Obama administration that extended discrimination protection based on sexual orientation or gender identity to federal workers and federal contractor employees. However, the Trump administration is seeking to reverse that interpretation and the associated protections.

The Supreme Court has agreed to hear a series of cases on the interpretation of "sex" in the Civil Rights Act of 1964; specifically, to decide whether the Act's prohibition of employment discrimination based on sex applies to sexual orientation or transgender status.

In a brief submitted to the court on August 23, 2019, the Department of Justice argues that federal employment law doesn't protect workers from discrimination based on sexual orientation. A SHRM article notes that "the department's lawyers said that the ordinary meaning of "sex" is biologically male or female and doesn't include sexual orientation." Major companies, like the EEOC, are fighting to retain protections. In a SHRM article, attorney Allen Smith states that "more than 200 businesses signed a brief on July 2 calling on the Supreme Court to rule that Title VII of the Civil Rights Act of 1964 prohibits discrimination based on sexual orientation and gender identity." The Supreme Court has agreed to hear two cases, one from a federal appeals court in New York that found that discrimination against gay men and lesbians is a form of sex discrimination and one from a court in Georgia that came to the opposite conclusion. The justices also agreed to decide the separate question of whether Title VII bars discrimination against transgender people.

The New York Times reports that in a minor case, "Justice Neil M. Gorsuch wrote that courts should ordinarily interpret statutes as they were understood at the time of their enactment." Justice Ruth Bader Ginsburg held that "Congress may design legislation to govern changing times and circumstances." Adding, from a previous opinion, "Words in statutes can enlarge or contract their scope as other changes, in law or in the world, require their application to new instances or make old applications anachronistic."

KEY TAKEAWAY

Law is interpreted (and, by extension, enforced) differently by different Administrations and courts. As Zadie Smith observed: "Progress is never permanent, will always be threatened, must be redoubled, restated and reimagined if it is to survive."

PRACTICE QUESTION

One of your organization’s core values is equal opportunity. At an HR Meet & Greet an employee asks you what impact a Supreme Court decision would have on organizational policy. Which of the following is the best response?

- We will change our policy and practices to reflect the Supreme Court's interpretation of discrimination protections.
- As a law-abiding company, we support the Department of Justice's position on this matter.
- Our position is not to comment on pending litigation.
- We have signed the brief in support of retaining discrimination protections for sexual orientation and gender identity and our policy and practices will continue to reflect that interpretation regardless of the Supreme Court's decision.

Answer

We have signed the brief in support of retaining discrimination protections for sexual orientation and gender identity and our policy and practices will continue to reflect that interpretation regardless of the Supreme Court's decision.

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2.7: Introduction to Equal Employment Opportunity

What you'll learn to do: Discuss EEO (Equal Employment Opportunity) compliance best practices and enforcement

The EEOC is the front-line of the battle for equal employment opportunity and is the source for EEO practices, process, and impacts. In this section we'll discuss EEO compliance best practices, how the EEOC complaint and enforcement process works and provide perspective on the cost of EEO violations.

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2.8: EEO Best Practices

Learning Objectives

1. Discuss EEO compliance best practices

As part of its E-Race (Eradicating Racism & Colorism from Employment) Initiative, the EEOC has identified a number of best practices that are applicable broadly, including the following:

Training, Enforcement, and Accountability

Ensure that management—specifically HR managers—and all employees know EEO laws. Implement a strong EEO policy with executive-level support. Hold leaders accountable. Also: If using an outside agency for recruitment, make sure agency employees know and adhere to relevant laws; both an agency and hiring organization is liable for violations.

Promote an Inclusive Culture

It's not just enough to talk about diversity and inclusion—it takes work to foster a professional environment with respect for individual differences. Make sure that differences are welcomed. Being the "only" of anything can get tiring, so make sure you're not putting further pressure on people by surrounding them in a culture that encourages conformity. A great way to promote an inclusive culture is to make sure your leadership is diverse and to listen to the voices of minorities.

Develop Communication

Fostering open communication and developing an alternative dispute-resolution (ADR) program may reduce the chance that a miscommunication escalates into a legally actionable EEO claim. If you're not providing a path for employees to have issues resolved, they'll look elsewhere. Additionally, it's essential to protect employees from retaliation. If people think reporting an issue will only make the situation worse, they won't bring it up, which will cause the issue to fester and lead to something worse than it once was.

Evaluate Practices

Monitor compensation and evaluation practices for patterns of potential discrimination and ensure that performance appraisals are based on job performance and accurate across evaluators and roles.

Audit Selection Criteria

Ensure that selection criteria do not disproportionately exclude protected groups unless the criteria are valid predictors of successful job performance and meet the employer's business needs. Additionally, make sure that employment decisions are based on objective criteria rather than stereotypes or unconscious bias.

Make HR Decisions with EEO in Mind

Implement practices that diversify the candidate pool and leadership pipeline. Provide training and mentoring to help employees thrive. All employees should have equal access to workplace networks.

MAKING HR DECISIONS

Now that you've learned EEO compliance best practices, let's check your instincts and take a look at a few HR situations.

1. A manufacturing company that's traditionally been staffed by white men will do better in terms of performance and productivity if they don't rock the boat on diversity and continue to hire mostly white men. Do you agree?
    - No, they should focus on hiring a more diverse workforce and fostering a culture of inclusion because a variety of voices and experiences actually leads to better company performance.
    - Yes, the company should stay as it is. Cultural adjustment is expensive.
    - No, they should diversify their workplace to be appealing to diverse clients and customers.
2. Your employee, Laura, has been with the company for two years. About half of her job involves sitting at her desk inputting lading records for your office supply company. The other half involves emptying the delivery trucks and shelving the supply boxes in the proper places in the warehouse. Laura happily announces that she's pregnant. You immediately suggest to your boss that you cut out the half of Laura's job that involves physical labor and also institute a temporary pay cut since someone else will have to do that work. Your boss says absolutely not. Which of the following is NOT a reason your boss may have rejected the suggestion to cut Laura's hours and pay?
    - It is illegal to pay women less than men for the same job.
    - Laura should be encouraged to quit completely since she probably will anyway once the baby is born.
    - It is illegal to discriminate against a pregnant woman in employment.
    - It is legal for Laura to ask for reasonable accommodation in her job during her pregnancy, like more frequent breaks.
3. You run HR for a tech company that's starting to take off and needs to expand its staff. Part of what you offer potential employees is a chill atmosphere with flexible work hours (some people work 2p to 10p, for example) pinball machines, a beer tap in the kitchen, and a company kickball team. Your recruiting firm sends you a resume for a software engineer with amazing qualifications, but there's no identifying information. You decide you must have this coding wizard on your team. When the candidate shows up for the interview, you discover she's a 48-year-old Latinx woman. What do you do?
    - Hire her for the job she's interviewing for but give her solo projects so she won't be uncomfortable with the rest of your team—or the team with her.
    - Hire her for the job she's interviewing for and let her do it—all you can do is wait to see what happens.

- Interview her, but do your best to make it clear that this company isn't a good fit for her. The bros you currently employ wouldn't be comfortable working with her.
- Change the job description to focus on project management since you could really use someone with her authority and, er, seniority in that role.

4. You are the hiring manager for a high-end car dealership. Most of your clients are wealthy, divorced older men who can afford a car that will make them look good as they search for their second wives. One of your applicants for a sales position is a well-dressed young white man who knows a lot about cars—the history of your brand, the features and attributes of specific models, and the innovations coming soon. He was also a top salesman at his previous job. In the course of the interview, he mentions that his husband isn't all that interested in cars. Do you make him an offer?
    - Yes. He's highly qualified, and he might diversify our customer base to include more LGBT+ car buyers who can afford our brand.
    - Yes. We've been taking a hit on diversity, and if we hire him, we can claim to have some diversity while he still blends in with the rest of our sales force.
    - No. He wouldn't succeed because our clients would sense he's gay and shy away.
    - No, and we're covered because appealing to rich, straight, white guys is a Bona Fide Occupational Qualification for our dealership.
5. You're in charge of hiring for a web development company, and you need to expand your User Experience (UX) team. This team is responsible for making sure that the websites you build offer the smoothest, most intuitive, and easy interface for users. One of your current employees tells you about a guy he went to college with, Andy, who would be perfect for the role. He mentions that Andy has been recognized with industry awards, has written articles on UX, and oh, by the way, he's blind. What's your most thoughtful reaction in terms of your company's success?
    - Interview and hire him. He'll be good for attracting new clients, especially with his name recognition.
    - Interview him and hire him. Your company will get a perspective on web accessibility for those with visual impairments that will shake up the way your entire engineering and UX teams think.
    - Interview and hire him but be ready to spend money on accommodations.
    - Interview him and hire him, and then see where he fits in with the team.
6. You've hired a recruiting firm to find you some new store manager candidates for your upscale unisex clothing store. The firm has sent you a bunch of resumés, and you're starting to interview people. You begin to notice that all the candidates are young, thin white women. What do you do?
    - Call them and tell them you want more diversity overall in the candidate pool—and specify what you mean by that.
    - Call them and tell them you need to interview some men since you have male customers.
    - Accept it. This is who they're sending you, so they must be the best candidates.
    - Accept it. This is the kind of person you were picturing anyway, so you're going to roll with it.
7. Your company's workforce has been getting more and more diverse, in part because of a deliberate effort to hire a wider range of people and in part because the demographics of your

area are changing, and younger candidates are more diverse as a result. There have been some challenges in terms of older employees wanting the new hires to learn to "fit in," and new hires feeling excluded or discriminated against. Basically, you've got diversity without inclusion. What's your best course of action for fixing this problem?

- Get the executive team together to talk this through and then issue a directive on acceptable behavior.
- Start working on several levels to increase individual empathy as well as company-wide inclusion... but it's going to be expensive in terms of time and effort.
- Go online and find a well-recommended diversity training firm. Then set aside some time for the whole company to go through their training.
- Examine your official policies to see whether any of them inhibit inclusion.

Answer

1. No, they should focus on hiring a more diverse workforce and fostering a culture of inclusion because a variety of voices and experiences actually leads to better company performance.
    - When a company is made up of people who are alike in terms of demographics, education, geography, and/or experience, those people tend to think a lot alike, which makes innovation and problem solving a lot more challenging. Diversifying the workforce isn't easy, but it's worth it in terms of measurable company performance.
2. Laura should be encouraged to quit completely since she probably will anyway once the baby is born.
    - Thanks to the Pregnancy Discrimination Act of 1978, Laura has the right to continue to do her job throughout her pregnancy. Any discrimination—even if it seems considerate of her condition—is illegal.
3. Hire her for the job she's interviewing for and let her do it—all you can do is wait to see what happens.
    - This is what you'd do with any other coder, right? She's experienced, and she has a lot to teach your team. Your job is to foster a culture of inclusion to make sure that she's treated as well as any other member of the team and that your company grows both from her experience in the field and from increasing its diversity.
4. Yes. He's highly qualified, and he might diversify our customer base to include more LGBT+ car buyers who can afford our brand.
    - If he's the best candidate in every way, you should hire him for two reasons: 1) he might expand your customer base to include LGBT+ car buyers, and 2) if you don't you might have a discrimination suit on your hands.
5. Interview him and hire him, and then see where he fits in with the team.
    - As you would with any other employee. Just having him around will change how your team thinks, and this has potentially huge returns for both your product and your profits. However, you shouldn't assume "blind guy equals blind people specialist." Andy may not appreciate that, and you may be missing out on a whole bunch of his other skills and specializations.

6. Call them and tell them you want more diversity overall in the candidate pool—and specify what you mean by that.
    - It's highly unlikely that the best candidates in terms of experience and ability all look exactly alike. Also, if someone decides to sue you for discrimination in hiring, the fact that you used a recruiting company doesn't shield you from being liable for discriminatory practices. Be very specific that you want a completely open recruiting process, and if they don't change their ways, you can find another company. It's still cheaper than paying lawyers.
7. Start working on several levels to increase individual empathy as well as company-wide inclusion... but it's going to be expensive in terms of time and effort.
    - From policies to teams to individuals, in order for inclusion to stick, the whole company needs to work on making sure there is space for every individual to get their job done to the best of their ability. Old guard employees need to know that the company does better when D&I are working well, and new employees need to see that the company is invested in them. Yes, it will cost something, but the payoff far exceeds the cost.

Enforce an Anti-Harassment Policy

Establish, communicate and enforce a strong anti-harassment policy. You should conduct periodic training for all employees and enforce the policy. The policy should include:

- A clear explanation of prohibited conduct, including examples
- Clear assurance that employees who make complaints or provide information related to complaints will be protected against retaliation
- A clearly described complaint process that provides multiple, accessible avenues of complaint
- Assurance that the employer will protect the confidentiality of harassment complaints to the extent possible
- A complaint process that provides a prompt, thorough, and impartial investigation
- Assurance that the employer will take immediate and appropriate corrective action when it determines that harassment has occurred

PRACTICE QUESTION

You are developing an anti-harassment policy for your organization. Based on your reading of EEOC's E-Race Initiative, you decide to:

- Develop an alternative dispute resolution process.
- Add a paragraph on anti-harassment to the employee handbook.
- Establish, communicate, and enforce a clear anti-harassment policy.
- Focus on harassment related to race and color only.

Answer

Establish, communicate, and enforce a clear anti-harassment policy.

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2.9: EEO Complaints

Learning Objectives

1. Explain the process for filing an EEO complaint
2. Explain how EEO complaints are pursued

If an employee believes they were or are being discriminated against at work based on a protected category, the person can file a complaint with the EEOC or a state or local agency. For example, in California, a discrimination claim can be filed either with the state's administrative agency, the California Department of Fair Employment and Housing (DFEH), or the EEOC. Workplacefairness.org notes that the "California anti-discrimination statute covers some smaller employers not covered by federal law. Therefore, if your workplace has between 5 and 14 employees (or one or more employees for harassment claims), you should file with the DFEH." California law also addresses language discrimination—for example, "English-only" policies. In brief, "an employer cannot limit or prohibit employees from using any language in the workplace unless there is a business necessity for the restriction." This section discusses private-sector EEO complaints and enforcement. Federal job applicants and employees follow a different process, linked here.

Who Should File

If federal EEO law applies your workplace and you believe you were discriminated against at work because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information, you can file a charge of discrimination with the EEOC.

Filing a charge of discrimination involves submitting a signed statement asserting that an employer, union, or labor organization engaged in employment discrimination. The claim serves as a request for the EEOC to take remedial action. Note that an individual, organization, or agency is allowed to file a charge on behalf of another person in order to protect that person's identity. A person (or authorized representative) is required to file a Charge of Discrimination with the EEOC prior to filing a job discrimination lawsuit based on EEO laws with the exception of the Equal Pay Act. Under the Equal Pay Act, you are allowed to file a lawsuit and go directly to court.

Figure 2.9.1: The EEOC's Public Portal

How to File

To start the process, you can use the EEOC's Public Portal to submit an inquiry or schedule an "intake" interview. The Public Portal landing page also has a FAQ section and Knowledge Base and allows you to find a local office and track your case. The two most frequently accessed articles are linked below:

- What happens during an EEOC intake interview?
- If I submit an online inquiry, does that mean I filed a charge of discrimination?

The second step in the process is to participate in the interview process. The interview allows you to discuss your employment discrimination situation with an EEOC staff member and determine whether filing a charge of discrimination is the appropriate next step for you. The decision of whether to file or not is yours.

The third step in the process, filing a Charge of Discrimination, can be completed through the Public Portal site.

When to File

The general rule is that a charge needs to be filed within 180 calendar days from the day the discrimination took place. Note that this time frame includes weekends and holidays, except for the final day. This time frame is extended to 300 calendar days if a state or local agency enforces a law that prohibits employment discrimination on the same basis. However, in cases of age discrimination, the filing deadline is only extended to 300 days if there is a state law prohibiting age discrimination in employment and a state agency authorized to enforce that law.

If more than one discriminatory event took place, the deadline usually applies to each event. The one exception to this rule is when the charge is ongoing harassment. In that case, the deadline to file is within 180 or 300 days of the last incident. In conducting its investigation, the agency will

consider all incidents of harassment, including those that occurred more than 180/300 days earlier.

If you are alleging a violation of the Equal Pay Act, the deadline for filing a charge or lawsuit under the EPA is two years from the day you received the last discriminatory paycheck. This timeframe is extended to three years in the case of willful discrimination. Note that if you have an Equal Pay Act claim, you may want to pursue remedy under both Title VII and the Equal Pay Act. The EEOC recommends talking to field staff to discuss your options.

Key point: filing deadlines will generally not be extended to accommodate an alternative dispute resolution process—for example, following an internal or union grievance procedure, arbitration, or mediation. These resolution processes may be pursued concurrently with an EEOC complaint filing. The EEOC is required to notify the employer that a charge has been filed against it.

If you have 60 days or less to file a timely charge, refer to the EEOC Public Portal for special instructions or contact the EEOC office closest to you.

PRACTICE QUESTION

A friend of yours believes she's being discriminated against at work and is trying to decide whether to address the situation with her manager, talk to a union representative or file a claim. What advice should you give her?

- Avoid discussing the issue with the EEOC until you've decided since that conversation constitutes filing a claim.
- The filing deadline is extended while you pursue resolution internally—for example, with your manager and/or union.
- Be aware that the time frame for filing a claim is 180 workdays from the date of the incident.
- Be aware that the time frame for filing a claim is 180 calendar days from the date of the incident.

Answer

Be aware that the time frame for filing a claim is 180 calendar days from the date of the incident.

Claim Assessment

The EEOC is required to accept all claims related to discrimination. If the EEOC finds that the laws it enforces are not applicable to a claim, that a claim was not filed in a timely manner, or that it is unlikely to be able to establish that a violation occurred, the agency will close the investigation and notify the claimant.

Claim Notice

Within 10 days of a charge being filed, the EEOC will send the employer a notice of the charge.

Mediation

In some cases, the agency will ask both the claimant and employer to participate in mediation. In brief, the process involves a neutral mediator who assists the parties in resolving their employment disputes and reaching a voluntary, negotiated agreement. One of the upsides of mediation is that cases are generally resolved in less than three months—less than a third of the time it takes to reach a decision through investigation. For more perspective on mediation, visit the EEOC's Mediation web page.

Investigation

If the charge is not sent to mediation, or if mediation doesn't resolve the charge, the EEOC will generally ask the employer to provide a written response to the charge, referred to as the "Respondent's Position Statement." The EEOC may also ask the employer to answer questions about the claims in the charge. The claimant will be able to log in to the Public Portal and view the position statement. The claimant has 20 days to respond to the employers position statement.

How the investigation proceeds depends on the facts of the case and information required. For example, the EEOC may conduct interviews and gather documents at the employer site or interview witnesses and request documentation. If additional instances of discriminatory behavior take place during the investigation process, the charge can be "amended" to include those charges or an EEOC agent may recommend filing a new charge of discrimination. If new events are added to the original charge or a new charge is filed, the new or amended charge will be sent to the employer and the new events will be investigated along with the prior events.

EEOC Decision

Once the investigation has been completed—on average, a ten-month process—the claimant and employer are notified of the result. If the EEOC determines the law may have been violated, the agency will attempt to reach a voluntary settlement with the employer. Barring that, the case will be referred to EEOC's legal staff (or, in some cases, the Department of Justice), to determine whether the agency should file a lawsuit.

Right to Sue

If the EEOC decides not to file suit, the agency will give the claimant a Notice of Right to Sue, allowing the claimant to pursue the case in court. If the charge was filed under Title VII or the ADA, the claimant must have a Notice of Right to Sue from EEOC before filing a lawsuit in federal court. Generally, the EEOC must be allowed 180 days to resolve a charge. However, in some cases, the EEOC will issue a Notice of Right to Sue in less than 180 days.

PRACTICE QUESTION

Your friend is still leery about proceeding and asks you for additional perspective on how a claim would proceed or be pursued. Which of the following explanations should you provide?

- The EEOC may ask both the claimant and employer to participate in mediation.
- The EEOC will ask the claimant to conduct interviews and collect documents to support the claim.
- The EEOC can require a claimant and employer to participate in mediation.
- If the EEOC does not litigate the case, there is no other course of action.

Answer

The EEOC may ask both the claimant and employer to participate in mediation.

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2.10: EEO Violations

Learning Objectives

1. Identify the impacts of EEO violations

In 2018, the EEOC received 76,418 charges of workplace discrimination, including approximately 40,000 charges of retaliation, 25,000 charges of discrimination (in each category) based on sex, disability, and race, and 17,000 charges of age-related discrimination. The agency resolved 90,558 charges, securing over $500 million in settlements for victims in the private sector, state and local government, and federal workplaces.

In the press release announcing 2018 fiscal year statistics, Acting Chair Victoria A. Lipnic states that "we cannot look back on last year without noting the significant impact of the #MeToo movement in the number of sexual harassment and retaliation charges filed with the agency." The number of sexual harassment charges filed increased 14% over 2017 and the agency obtained $56.6 million in monetary benefits for victims of sexual harassment.

For perspective, here are a few recent verdicts and settlements:

- **7/2019—$3.8 million.** Judgment against City of Tucson for failing to provide a lactation room for a firefighter
- **6/2019—$5 million.** Proposed agreement to settle a class-action suit claiming that JP Morgan Chase Bank's paid parental leave policy discriminated against fathers
- **2/2019—$1.5 million.** Punitive damages for an ex-KFC employee for breastfeeding accommodation violations.
- **2/2019—$11 million.** Judgement against Silverton Partners, Inc. for sexual harassment, retaliation, failure to prevent harassment/retaliation, and negligent supervision, retention, and hiring.
- **11/2018—$6 million.** Judgement against Teva Pharmaceuticals for discrimination on the basis of age, national origin, and retaliation.
- **10/2019—$3 million.** Judgement against PPG Industries, Inc. for gender discrimination. Half of the award was damages for emotional distress.

PRACTICE QUESTION

A friend of yours is a small business owner who prefers to hire "people like me." Which of the following would best convey the impacts of EEO violations?

- Workplace discrimination can result in significant legal, operating, brand, and human costs.
- The EEOC doesn't accept claims from small businesses.
- An applicant won't want to pay claim filing fees, so the probability of a claim is low.
- You're the boss, you make the rules.

Answer

Workplace discrimination can result in significant legal, operating, brand, and human costs.

As a Center for American Progress report notes: “There’s a price to be paid for workplace discrimination.” And that price includes more than attorney fees and judgements. In addition to the direct costs of non-compliance, there are operating, brand, and human costs, including not only management time in responding to or defending against a claim but the impact on how an organization is perceived by customers, partners, and employees. Looking at just one aspect of that equation—turnover—The Level Playing Field Institute estimated the cost of unfairness to be $64 billion in 2007. This figure doesn’t factor in penalties, brand impact or the morale and productivity of employees who remain. This is simply the estimated cost of losing and replacing more than 2 million American workers who leave jobs annually due to unfairness and discrimination. The report goes on to state that “businesses that discriminate based on a host of job-irrelevant characteristics, including race, ethnicity, gender, age, disability, and sexual orientation and gender identity put themselves at a competitive disadvantage compared to businesses that evaluate individuals based solely on their qualifications and capacity to contribute.”

Although the Center’s point of reference is LGBT individuals, the points they make are valid across the spectrum of diversity. Specifically, discrimination against employees based on factors unrelated to job performance negatively impacts the economic performance of businesses in every human resource and revenue-generation category including recruitment, retention, job performance, productivity, engagement, and marketing to consumers.

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2.11: Introduction to Working with a Diverse Workforce

What you'll learn to do: Discuss the benefits & challenges of a diverse workforce

While laws can provide useful guidance and protect individuals from discrimination, there is more to diversity than simply obeying the law. In this section, we'll discuss the business case for this course of action, the benefits, the challenges, and what works in regards to diversity.

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2.12: Diversity and Inclusion

Learning Objectives

1. Compare diversity and inclusion

Language can be imprecise and, therefore, ineffective in supporting communication or the transfer of meaning that is essential to collaboration and, in particular, affecting change. Diversity and inclusion speaker and advisor Joe Gerstandt comments "maybe our greatest barrier to further progress [toward achieving diversity] is that [diversity] remains an issue that seems very vague and ambiguous to many people, primarily about platitudes and political correctness. It is [a term that is] watered down now, it means a bunch of different stuff to a bunch of people… and to some people, it has become too negative, too complicated, too charged." So true.

In order to get us all on the same page, we'll start with a minimalist statement that defines and differentiates between diversity and inclusion. To quote Gerstandt: "Diversity means difference and inclusion means our ability to include difference." Practically speaking, diversity can be understood as a range of human characteristics that differ from our own and/or from those we share with the groups to which we belong. Inclusion is more intuitive; as the Oxford Dictionary defines it, inclusion is "the action or state of including or of being included within a group or structure." One point worth emphasizing in that definition: inclusion involves "including" as well as "being included." To that point, Gerstandt emphasizes that "[Inclusion is] activist in nature." As he puts it, the key question is "what do you do intentionally, and deliberately to be more inclusive?"

A distinction worth noting is that there are generational differences in how diversity and inclusion are interpreted. In their 2019 report "The Bias Barrier: Allyships, Inclusion and Everyday Behaviors," Deloitte identified that "millennials (aka Generation Y) view inclusion as having a culture of connectedness that facilitates teaming, collaboration, and professional growth." In contrast, Baby Boomers and Generation X-ers consider diversity and inclusion a matter of representation and assimilation.

Table 2.1.2.1: Millennial vs. Non-millennial Definitions of Diversity

Millennials are more likely to focus on:	Non-millennials are more likely to focus on:
32% more likely to focus on respecting identities	21% more likely to focus on representation
35% more likely to focus on unique experiences	19% more likely to focus on religion and demographics
29% more likely to focus on ideas, opinions, and thoughts	25% more likely to focus on equality

PRACTICE QUESTION

A member of your staff asks you to clarify the terms diversity and inclusion. Which of the following is the best response?

- Diversity means difference and inclusion refers to our ability to include difference.
- Diversity and inclusion are historical ideas; they no longer apply to the workplace.
- Diversity is difference at an individual level; inclusion refers to differences on an organizational level.
- Diversity and inclusion are synonymous; they can be used interchangeably.

Answer

Diversity means difference and inclusion refers to our ability to include difference.

KEY PERSPECTIVE POINT

For Millennials, inclusion is primarily about cognitive diversity; specifically, "capitalizing on a variety of perspectives in order to make a stronger business impact." Deloitte University Leadership Center for Inclusion Managing Principal Christie Smith and Deloitte consultant Dr. Stephanie Turner note that transforming the diversity and inclusion model isn't just a retention issue, "the millennial viewpoint is simply better for business."

RELATED STATISTIC

An IBM study found that 75% of CEOs and executives consider leveraging cognitive diversity fundamental for organizational success.

If you think diversity and inclusion—however it's defined or interpreted—is passé, think again. SHRM Senior Legal Editor Lisa Nagele-Piazza lists "improving gender diversity" as one of the Top Ten Workplace Trends for 2019.

Author, researcher, and advisor Josh Bersin considers diversity and inclusion "a very hot topic." In fact, he says it comes up in every client conversation. Why? Follow the hashtags (e.g., #MeToo, #BlackLivesMatter), political positioning, with the emphasis on income inequality and fairness, and the realities of employee expectations translating into activism or turnover. As Bersin puts it: diversity and inclusion is not [just] an HR program, it's a business strategy.

LEARN MORE

For additional perspective on diversity and inclusion, read recruitment automation software provider Ideal's Diversity and Inclusion: A Beginners Guide. For additional perspective on generational differences in how diversity is perceived, refer to The Radical Transformation of Diversity and Inclusion: The Millennial Influence, a joint project of Deloitte and the Billie Jean King Leadership Initiative (BJKLI).

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2.13: Benefits of Diversity

Learning Objectives

1. Discuss the benefits of a diverse workforce

UC Berkeley's Greater Good Science Center's (GGSC) definition of diversity captures not only that essential element of difference but why it matters. To quote: "'diversity' refers to both an obvious fact of human life—namely, that there are many different kinds of people—and the idea that this diversity drives cultural, economic, and social vitality and innovation.'" From a human resource management standpoint, it's important to note that diversity benefits both the organization and individuals. GGSC cites research indicating that "individuals thrive when they are able to tolerate and embrace the diversity of the world." Of course, the opposite is also true: intolerance undermines our well-being.

In the Executive Summary of their 2018 "Delivering through Diversity" report, McKinsey & Company consultants Vivian Hunt, Sara Prince, Sundiatu Dixon-Fyle, and Lareina Yee observe that "While social justice, legal compliance, or maintaining industry-standard employee environment protocols is typically the initial impetus behind these efforts, many successful companies regard I&D [inclusion & diversity] as a source of competitive advantage, and specifically as a key enabler of growth." In this follow-up to prior research conducted in 2015, the authors found the business case for diversity and inclusion remains compelling. Specific findings:

- **Diversity drives business performance.** There is a "statistically significant correlation between a more diverse leadership team and financial outperformance."
- **Executive diversity (gender++) matters.** "Companies in the top-quartile for gender diversity on executive teams were 21% more likely to outperform on profitability and 27% more likely to have superior value creation." The authors note that the connection between executive diversity and performance isn't limited to gender. "Companies in the top-quartile for ethnic/cultural diversity on executive teams were 33% more likely to have industry-leading profitability." The authors conclude that executive diversity in "the myriad ways in which diversity exists beyond gender (e.g., LGBTQ+, age/generation, international experience) can be a key differentiator among companies.*f*"
- **Lack of diversity impairs business results.** As the authors phrase it, "There is a penalty for opting out [of diversity]." Specifically, "companies in the bottom quartile for both gender and ethnic/cultural diversity were 29% less likely to achieve above-average profitability than were all other companies in our data set."

For human resource management, in particular, it's important to understand what's driving higher performance.

PRACTICE QUESTION

You're preparing a "why it matters" diversity briefing for managers and want to highlight key benefits. Which of the following points should you emphasize?

- Diversity drives business performance.
- Diversity is a brand perception issue only.
- Diversity only matters in customer-facing positions.
- Only gender diversity improves business profitability.

Answer

Diversity drives business performance.

The authors believe that the positive relationship between I&D and performance is due to the fact that "more diverse companies are better able to attract top talent; to improve their customer orientation, employee satisfaction, and decision making; and to secure their license to operate." To expand on those findings, here are seven benefits drawn from Hult International Business School's blog:

1. Greater creativity and innovation—diversity of thought—for example, different experiences, perspectives, and cognitive styles—can stimulate creativity and drive innovation. Hult blogger Katie Reynolds notes that "cosmetic giant L'Oréal attributes much of its impressive success in emerging markets to its multicultural product development teams." The *Harvard Business Review* article she references, "L'Oréal Masters Multiculturalism," is a recommended read for any student interested in international business.
2. Improved competitive positioning—"local knowledge"—everything from local laws and customs to connections, language, and cultural fluency—can increase the probability of success when entering a new country or region.
3. Improved marketing effectiveness—having an understanding of the nuances of culture and language is a prerequisite for developing appropriate products and marketing materials. The list of gaffes is endless…and the financial and brand impact of errors can be significant, from a line of Nike Air shoes that were perceived to be disrespectful of Allah to the poor Chinese translation of KFC's "Finger-lickin' good tagline: "so tasty, you'll eat your fingers off!"
4. Improved talent acquisition & retention—this is particularly critical in a competitive job market: embracing diversity not only increases the talent pool, it improves candidate attraction and retention. A Glassdoor survey found that 67% of job seekers indicated that diversity was an important factor when evaluating companies and job offers. Reynolds also cites HR.com research that indicates diversity, including diversity of gender, religion, and ethnicity, improves retention.
5. Increased organizational adaptability—hiring individuals with a broader base of skills and experience and cognitive styles will likely be more effective in developing new products and services, supporting a diverse client base, and will allow an organization to anticipate and leverage market and socio-cultural or political developments/opportunities.
6. Greater productivity—research has shown that the range of experience, expertise, and cognitive styles that are implicit in a diverse workforce improve complex problem-solving, innovation, and productivity. Additional benefit: responsiveness—A study conducted in Australia found that "when diversity is recognised and employees feel included they have a better responsiveness to changing customer needs."

7. Greater personal and professional growth—learning to work across and leverage differences can be an enriching experience and an opportunity to build a diverse network and develop a range of high-value soft skills including communication, empathy, collaborative problem-solving, and multicultural awareness. To that point, GGSC reports that a study published in Psychological Science found that "social and emotional intelligence rises as we interact with more kinds of people."

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2.14: Challenges of Diversity

Learning Objectives

1. Discuss the challenges of a diverse workforce

What makes us different can also make it challenging for us to work well together. Challenges to employee diversity are based not only on our differences—actual or perceived—but on what we perceive as a threat. Our micro (e.g., organizational culture) and macro (e.g., socio-political and legal) operating environment can also be challenges for diversity. Long-term economic, social, political, and environmental trends are rendering entire industries—and the associated skill sets—obsolete. For many in these industries and many slow-growth occupations, workplace trends seem to represent a clear and present danger.

In an article titled "Meet the US workforce of the future: Older, more diverse, and more educated," Deloitte notes that the U.S. labor market is increasingly dividing into two categories: "highly-skilled, well-paid professional jobs and poorly paid, low-skilled jobs." The authors Dr. Particia Buckley and Dr. Daniel Bachman note that there are relatively fewer middle-skill, moderate-pay jobs—for example, traditional blue-collar or administrative jobs. Indeed, as we've discussed in other modules, the idea of a static set of skills for a given occupation is a historical concept. The authors note that participation in the future labor force will increasingly require computer and mathematical skills, even at the low-skill end.

Deloitte expects the workforce of the future to be older ("70 is the new 50"), more diverse, and more highly educated. To the diversity point, Deloitte states that "if current trends continue, tomorrow's workforce will be even more diverse than today's—by gender, by ethnicity, by culture, by religion, by sexual preference and identification, and perhaps by other characteristics we don't even know about right now." The Bureau of Labor Statistics projects that by 2024, less than 60% of the labor force will identify as "white non-Hispanic," down from over 75% in 1994. Hispanics are projected to comprise approximately 20% of the 2024 labor force, African-Americans 13%, and Asians 7%. Women are expected to comprise 47% of the 2024 workforce. For many, these economic and demographic shifts represents a radical change. Macro-level challenges to diversity include fixed mindsets, economic trends, and outdated socio-political frameworks.

Here are specific challenges that may be experienced at the organizational level:

1. **Complexity.** This is the flip-side of one of diversity's benefits: it's hard work! Reynolds notes that while it might seem easier to work on a homogeneous team, there is a tendency to compromise and "settle for the status quo." The title of a Harvard Business Review article captures the dynamic: "Diverse Teams Feel Less Comfortable—And That's Why They Perform Better." The authors' argument: "working on diverse teams produces better outcomes precisely because it's harder."
2. **Differences in communication behaviors.** Different cultures have different communication rules or expectations. For example, colleagues from Asian or Native American cultures may be less inclined to "jump in" or offer their opinions due to politeness or deference as a new member or the only [fill in the blank] on the team.

3. **Prejudice or negative stereotypes.** Prejudice, negative assumptions, or perceived limitations can negate the benefits of diversity and create a toxic culture. As Reynolds notes, "although not all stereotypes are necessarily negative…all are simplifications that can prove limiting or divisive in the workplace. And while outright prejudice or stereotyping is a serious concern, ingrained and unconscious biases can be a more difficult challenge of workplace diversity to overcome."
4. **Differences in language and non-verbal communications.** George Bernard Shaw quipped "The single biggest problem in communication is the illusion that it has taken place." Clearly, language differences can be a challenge, including accents and idioms. Translation errors can also occur with non-verbal communication; gestures, eye contact, personal space, and greeting customs can be significantly (and disastrously) different across cultures and regions. For perspective, scan this *Business Insider* infographic. (https://www.businessinsider.com/how-to-properly-shake-hands-around-the-world-2015-3)
5. **Complexity & cost of accommodations.** Hiring a non-U.S. citizen may require navigating visas and employment law as well as making accommodations for religious practices and non-standard holidays.
6. **Differences in professional etiquette.** Differences in attitudes, behaviors, and values ranging from punctuality to the length of the workday, form of address, or how to manage conflict can cause tensions.
7. **Conflicting working styles across teams.** In addition to individual differences, different approaches to work and teamwork—for example, the relative value of independent versus collaborative/collective thought and work—can derail progress.

PRACTICE QUESTION

You will be discussing the benefits of diversity with manager, and you want to set realistic expectations. Which of the following points is a challenge you should convey?

- Diverse individuals can be expected to "hold their own" in conversations and debates.
- Team performance will decline.
- There is a potential for conflict based on conscious or unconscious bias.
- Language differences may be a challenge but non-verbal communications are universal.

Answer

There is a potential for conflict based on conscious or unconscious bias.

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2.15: Introduction to Promoting a Diverse Workforce

What you'll learn do to: Discuss how to promote diversity within your organization

In order to develop a diverse workforce, organizations must take deliberate steps to create a working environment where individuals of different background truly feel welcomed and valued. In this section we will discuss best practices in developing a diverse workforce.

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2.16: Developing a Diverse Workforce

Learning Objectives

1. Discuss what works in terms of developing a diverse workforce
2. Identify best practices for achieving workforce diversity

A *Harvard Business Review* article notes that "one of the most common ways that companies attempt to address organizational diversity is through formal training." Indeed, Harvard Kennedy School public policy professor and author of *What Works: Gender Equality by Design* Iris Bohnet notes that U.S. organizations spend approximately $8 billion annually on diversity training. With that type of investment, we would expect that training would translate into more diversity. And yet, despite extensive research, Bohnet "did not find a single study that found that diversity training in fact leads to more diversity." However, when she analyzed research on how people think, it began to make sense. Specifically, the data shows that "it is actually very hard to change mindsets." The key issue Bohnet identifies is unconscious bias, defined as "a prejudice in favor of or against one thing, person, or group compared with another—usually in a way that's considered to be unfair." As Franchesca Ramsey notes in an Upworthy article "bias is a natural response to living in a society that normalizes certain types of people and behaviors while it 'others' anything that's different."

Bohnet argues that design can address unconscious bias, referencing the classic example of implementing blind auditions for orchestras. Although un-biasing the audition process required multiple modifications, it eventually lead to over 50% of women advancing to the finals. Bohnet notes that there are things that work, if you design them right. For example, if you want to promote gender equality, start by reviewing job advertisements and de-biasing the language. Although not every attribute can be expressed as a gender-neutral word, language can be balanced, with a very gendered word like assertive, if that's a key characteristic, balanced by cooperation or collaboration. Bohnet also recommends applying blinding to the candidate screening and evaluation process. A start-up that conducted a traditional and blind recruitment in parallel found that they didn't have a significant gender or race bias; their bias was disciplinary. That is, they assumed that their target candidates were computer scientists and engineers rather than entertain a much broader range of candidates—including neuroscientists and psychologists—who could do the work. Another key design point drawn from behavioral science: defaults matter. For example, a company might change the default in job ads to part-time with the option to work full-time if desired. A telecommunications company in Australia changed its job ad default to flexibility to increase the odds that women would apply.

A final point: companies need to "use machines, algorithms, and data much more intelligently." Bonhet is not suggesting decisions be left up to machines, but to use machine and human capabilities to complement each other. Her conclusion is that "throwing money at the problem through diversity-training programs and leadership training programs…is not the way to go. We have to understand what's broken and then intervene where the issues are. In particular, she stresses using data on what works to inform our decision making."

Two forms of training that have shown promise in experiments with undergraduates may be able to accelerate the process of changing attitudes and behaviors. In their article "Two Types of Diversity Training that Really Work," researchers Alex Lindsey, Eden King, Ashley Membere,

and Ho Kwan Cheung discuss perspective-taking, or "mentally walking in someone else's shoes"—and goal-setting. The researchers found that having students take the perspective of a minority—specifically, "by writing a few sentences imagining the distinct challenges a marginalized minority might face"—"[improved] pro-diversity attitudes and behavioral intentions toward these groups" and that "these effects persisted even when outcomes were measured eight months after training." An additional compelling finding: perspective-taking seemed to produce what the team referred to as "crossover effects," where a student who took the perspective of a racial minority demonstrated more positive attitudes and behaviors toward LGBT individuals and vice versa.

A second activity that yielded positive results is diversity-specific goal setting combined with related training. For example, a participant might set a specific, measurable goal to challenge inappropriate comments about or directed to marginalized groups. In a small study, the researchers found that "goal setting within diversity training led to more pro-diversity behaviors three months after training and improved pro-diversity attitudes nine months after training."

PRACTICE QUESTION

You are conducting research to determine how best to use HR budget dollars dedicated to diversity initiatives. Based on your research, you decide to:

- Replacing human recruiters with machines.
- Invest 100% in one-time diversity training.
- Evaluating and redesigning current practices and training programs.
- Investing 100% in perspective-taking training.

Answer

Evaluating and redesigning current practices and training programs.

Best Practices

Achieving workforce diversity requires addressing not only conscious and unconscious bias, but dismantling the policies and practices that contribute to systemic bias. Companies that get it are, as Josh Bersin suggested, viewing diversity and inclusion as core to their business strategy. Bersin cites as an example Schneider-Electric, a French company, whose "executive team was made up of French nationals located in Paris." What the company found was that policy was limiting their growth—in particular, as they sought to expand into emerging markets. Schneider-Electric CHRO Olivier Blum wrote about the company's transformation in a LinkedIn article titled "Building an Inclusive Company in a Diverse World." (Building an Inclusive Company in a Diverse World) In the article, Blum muses "we live in a wonderfully diverse world . . . it's difficult to understand why and when did we start to value sameness so much; why don't our workplaces mirror the diversity that's all around us; and why is our society still dogged by exclusion?" A point he emphasizes: "diversity is meaningless without inclusion." As Bersin relays, the company realized it could "no longer tolerate a 'French-led' leadership team, or any forms of bias, discrimination, or non-inclusive thinking in its strategy." Here are a few key strategic commitments Schneider made to support workforce diversity:

- **Leadership Diversity.** "We want our leadership to reflect our business footprint, as well as the diversities of the communities in which we operate." To that end, they strive to foster an inclusive environment and cultivate diversity in gender, nationality, and generation.
- **Inclusive Practices and Policies.** "Diversity is challenging because it highlights what makes us all unique. To make it work we must hardwire it through policies and practices." Two of the policy changes Schneider made were to commit to salary equality and to launch a Global Family Leave policy that allows employees to take time off for the occasions that are relevant to them.
- **Inclusive Behavior.** "To lead in a diverse environment, our leaders must become aware of their own biases, and take accountability for building inclusive teams. " Schneider's top leaders participated in unconscious bias training so they could model desired change and subsequently engaged all managers in the training. Recognizing that training alone won't create an inclusive culture, Schneider is taking steps to reinforce, reward and recognize behavior to embed it in the culture.

Blum concludes: "In an increasingly complex business environment, finding a way to blend diversity in thought and ideas not only makes an organisation more human, more competitive, and more fun, it might be the only way to achieve sustainability."

CIO Senior writer Sharon Florentine identifies the following eight additional diversity and inclusion best practices, based on organizational transformation consultancy SY Partner's client and organizational experience:

1. **Establish a sense of belonging for everyone.** A sense of belonging and safety in your identity is not only a psychological need, it results in great creativity and engagement.
2. **Empathetic leadership is key.** D&I is more than an HR initiative. To make change happen, "every individual leader will need to buy into the value of belonging—both intellectually and emotionally" and be able to communicate why it matters.
3. **A top-down approach isn't enough.** A top-down approach "drives compliance, not commitment." Identify differences in employee experience and values to activate change from all directions.
4. **Quotas don't automate inclusion.** Creating an inclusive culture requires more than setting hiring goals. SY Partners associate principal Sabrina Clark advises organizations to take an honest look at the end-to-end employee experience, focusing on creating conditions that promote inclusion and developing ways to measure the impact.
5. **Inclusion is a habit that needs to be developed.** Inclusion requires individuals to build new habits or "micro-behaviors." Creating change cohorts that support behavior change on a daily basis is more effective than a one-time training.
6. **Maximize joy and connection, minimize fear.** Fear tends to cause people to narrow their perspective. To increase the potential for positive change, frame challenges as possibilities.
7. **Forget 'fit' and focus on helping individuals thrive.** The norms, power structures, and inequities in society can become embedded in an organization as "fit." Make sure "fit" is based on your organization's values and purpose.
8. **Consider your brand.** Florentine relays that "Brand and culture are intimately connected;" recognize that the transition to an inclusive culture will require changes in behavior change—ways of working, communicating, and contributing and changes in how the company operates.

PRACTICE QUESTION

Your Chief Human Resources Officer has asked you to develop a summary of best practices for achieving workforce diversity. Which of the following practices should you include?

- Conduct a one-time training.
- Implement a top-down approach.
- Implement hiring quotas.
- Make leaders accountable to building inclusive teams.

Answer

- Make leaders accountable to building inclusive teams.

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2.17: Introduction to Current Diversity-Related Trends

What you'll learn to do: Highlight current diversity-related trends

The chronic nature of both conscious and unconscious bias suggests that it may be time for a different approach; specifically, recruiting and training allies and using artificial intelligence to help filter out our biases. In this section, we'll discuss the role of allies and AI in the workplace.

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2.18: Current Diversity-Related Trends

Learning Objectives

1. Discuss the role of allies
2. Discuss the role of artificial intelligence

Two of the trends that are expected to drive the next wave of progress on diversity and inclusion are allies and artificial intelligence.

Allies

Deloitte suggests that allies may be the key to helping employees live the organization's values with regards to diversity and inclusion, serving as behavioral models and influencers in informal discussions and meetings. Their research suggests that a majority of respondents consider themselves allies, but don't feel empowered or know what to do. Specifically, 92% of survey respondents agreed with the statement "I feel dedicated to supporting individuals or groups who are different from me." This represents a massive force for change, and one that's positioned to see and respond to microaggressions in daily behavior. However, the research indicates allies need to be activated and, in particular, trained and supported to be effective. For perspective, although 73% of respondents indicated that they felt comfortable discussing bias, 30% ignored it when experienced or observed. Deloitte's conclusion: "the majority of today's workforce demonstrates that they want to be involved in advancing inclusion—they just don't know how."

RESPONSE TO BIAS IN THE WORKFORCE TODAY

- 34% of people confide in a colleague
- 31% of people confide in their supervisor
- 29% of people address it in the moment by speaking up
- 24% of people address it later by speaking to the person who was showing bias
- 23% of people address it later by speaking to the person who experienced bias
- 34% of people ignore it

For the action-oriented, here are a few things that allies can do now:

- **Understand how you can change your own way of doing things.** Start by asking "why?"
- **Develop greater empathy and understanding of different life experiences.** Expose yourself to new people and perspectives and challenge your interpretation of "normal."
- **When people say they don't feel included, listen and support them.** Cultivate a culture of safety and respect.
- **Recognize that when you're hiring and you aren't finding good diverse candidates, it's probably you not them.** Evaluate your recruiting strategy to ensure you're not perpetuating a cookie-cutter mold.
- **Talk to other allies about what you're doing and why.** Be vocal, share what works (and what doesn't), and consider teaming up to amplify impact.

PRACTICE QUESTION

You are a team leader in charge of twenty employees in a state with strong LGBT+ legal protections. You hire a highly-qualified employee, Jade, who does a phenomenal job but tends to keep to herself. Another member of your team, Mindy, happens to see Jade in the park on a Saturday and notices that Jade is clearly with her female partner. Mindy considers herself a good ally, so the first thing she does on Monday morning is rush to your office to tell you what she saw. Mindy wants to let Jade know that being gay is fine with her. She also wants to encourage Jade to come out to the whole team. You know Mindy can get a little too enthusiastic. What do you do?

- Go talk to Jade privately and encourage her to come out to the team. You'll make sure they all behave—or else!
- Explain to Mindy that part of good allyship includes respecting people's privacy, so the most progressive and LGBT+-friendly thing she can do is let Jade come out in her own time—if ever.
- Explain to Mindy that Jade was hired to do a job, not to be a beacon of diversity. Mindy needs to keep what she knows to herself, or there will be consequences.
- Give Mindy the department credit card and tell her to go buy a rainbow cake for the team to present to Jade that afternoon.

Answer

Explain to Mindy that Jade was hired to do a job, not to be a beacon of diversity. Mindy needs to keep what she knows to herself, or there will be consequences.

LEARN MORE

For additional action items and perspective, read Melinda Briana Eple's post "Tech Diversity: 12 Things Allies Can Do." (Tech Diversity: 12 Things Allies Can Do | by Melinda Briana Epler | Tech Inclusion)

Artificial Intelligence

One of the 2019 workplace diversity trends highlighted by HR application provider Ideal's Director of Marketing Kayla Kozan is the use of AI or artificial intelligence; specifically, using technology like AI to avoid unconscious bias. A related trend, as Bohnet recommended, is testing diversity initiatives with data. One of the advantages of using AI for sourcing and evaluating candidates is the potential to avoid bias based on demographic factors such as race, gender, and age. However, the AI industry is experiencing its own diversity crisis. Fortune reports that New York University research group AI Now stated that "a lack of diversity among the people who create artificial intelligence and in the data they use to train it has created huge shortcomings in the technology." According to writer Jonathan Vanian, "The report's authors believe that AI performance issues could be fixed if those working on the technology's development were more diverse, and noted that "while tech companies say they are aware of the problem, they haven't done much to fix it." An MIT Sloan Management Review article recognizes the upside value of AI, asking "what if, instead of perpetuating harmful biases, AI helped us overcome them and make fairer decisions…that could eventually result in a more diverse and inclusive world."

In order for that to happen, the people working with the technology need to do a better job of vetting the data used to train AI systems. In a New York Times article, Shorenstein Center on Media, Politics and Public Policy at the Harvard Kennedy School fellow Dipayan Ghosh notes that "It is far too easy to assume that technology has an objectivity that humans don't. But the reality is that 'artificial intelligence and machine learning and algorithms, in general, are designed by none other than us — people." Apparently, Hellen Turnbull's point about the unchallenged brain refers to both humans and machines.

PRACTICE QUESTIONS

1. You've identified allies as one of two key diversity-related trends to watch and are summarizing your findings. Which of the following is a point worth discussing with your management team?
    - The majority of today's workforce feel dedicated to supporting "people like me."
    - Research suggests that those who consider themselves allies don't feel empowered or know what to do.
    - The majority of today's workforce is ambivalent about inclusion.
    - Research suggests that those employees who consider themselves allies feel empowered and know what to do.
2. Which of the following is an AI-related point worth discussing with your management team?
    - Technology such as AI has an objectivity that humans lack.
    - The AI industry is noted for its diversity.
    - AI has the potential to help us achieve a more diverse and inclusive workplace.
    - AI has been proven to eliminate sourcing and evaluation bias based on demographic factors such as race, gender, and age.

Answer

1. Research suggests that those who consider themselves allies don't feel empowered or know what to do.
2. AI has the potential to help us achieve a more diverse and inclusive workplace.

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2.19: Putting It Together: Diversity in the Workplace

Although decades of advocacy and diversity training have had an impact, the results have been mixed. The upside: Deloitte's research into the current state of inclusion found that 86% of respondents felt they could be themselves most or all of the time at work. That statistic represents a significant improvement over a relatively short period of time. A survey conducted six years prior found that 61% of "respondents felt they had to hide at least one aspect of who they are." At that time, the conclusion was that "most inclusion programs require people to assimilate into the overall corporate culture" and that this need to "cover" directly impacts not only an individual's sense of self but their commitment to the organization.

On the downside, bias remains a constant, with over 60% of respondents reporting bias in their workplace. Deloitte reports that 64% of employees surveyed "felt they had experienced bias in their workplace during the last year." Even more disturbing, 61% of those respondents "felt they experienced bias in the workplace at least once a month." The percentages of respondents who indicated that they have observed bias in their workplaces during the last year and observe it on a monthly basis are roughly the same at 64% and 63%, respectively.

Research suggests that bias is now more subtle—for example, an act of "microaggression" rather than overt discrimination. It is, however, no less harmful. Deloitte's 2019 research found that bias impacts not only those who are directly affected, but also those who observe the behavior. Specifically, of those who reported experiencing or observing bias: 86% reported a negative impact on happiness, confidence, and well-being; 70% reported a negative impact on engagement and 68% reported a negative impact on productivity. Executive coach Laura Gates observes that the price of not addressing corrosive interpersonal behavior is too high. She notes that "if people don't feel safe, they can't be creative. If they aren't creative, they can't innovate. If they don't innovate, the business eventually becomes obsolete."

Given the slow pace of progress on D&I, it may be worth looking at the situation as Melinda Briana Epler proposes in one of her ally recommendations. Specifically, if it's not working, it may be you. Although we are generally aware that our perceptions are subjective, we are largely unaware that there can be a disconnect between our conscious thoughts and our unconscious beliefs or biases, primarily a product of socio-cultural conditioning. To see how this might play out, watch Yassmin Abdel-Magied's "What does my headscarf mean to you?" TED Talk.

https://www.youtube.com/watch?v=18zvlz5CxPE

LEARN MORE

To take D&I to the next level, raise your awareness of unconscious bias and use design hacks and technology to circumvent automatic reactions. For more perspective on how to cultivate diversity, refer to GGSC's How Do I Cultivate Diversity (Diversity Definition | What Is Diversity) page. To quote Abdel-Magied: "If we want to live in a world where the circumstances of your birth do not dictate your future and where equal opportunity is ubiquitous, then each and every one of us has a role to play in making sure unconscious bias does not determine our lives." Perhaps, with practice, egalitarianism will become our default.

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2.20: Discussion: Diversity in the Workplace

In 2019, when reviewing a list of CEOs of Fortune 500 companies, less than 5% are women—in fact, there are more men named David that are CEOs of Fortune 500 companies than there are women CEOs.

As we discussed, when leadership at the executive level is diverse, companies are more profitable. So why aren't more companies making sure their senior team is diverse?

Discussion Prompt

Take a look at 2019's Fortune 500 list and choose any company that has a CEO who is part of a minority group. This could be Tim Cook at Apple, or Mary Dillon at Ulta, or anyone else of your choosing. Then, go out to that company's website and determine the diversity of that company's senior team (hint: any publicly traded company is likely to list information on their top three executives in the shareholder's section).

How did your company do in 2019—did they perform better than in 2018 and 2017? Do they have any space on their careers page dedicated to diversity? Answer these questions in your paper.

Write a paragraph about the company's diversity initiatives and if you feel they are benefitting the business.

Grading

Share your opinions below and respond to two of your classmates' thoughts.

Discussion Grading Rubric				
Criteria	Not Evident	Developing	Exemplary	Points
Submit your initial response	**0 pts** No post made	**5 pts** Post is either late or off-topic	**10 pts** Post is made on time and is focused on the prompt	10 pts
Respond to at least two peers' presentations	**0 pts** No response to peers	**2 pts** Responded to only one peer	**5 pts** Responded to two peers	5 pts

Discussion Grading Rubric				
Criteria	Not Evident	Developing	Exemplary	Points
			Total:	**15 pts**

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2.21: Assignment: Develop a Diversity Allies Program

Scenario

Achieving a diverse workplace requires more than a business case; it requires us—both individually and collectively—to question our assumptions and the business practices and policies based on these assumptions. Complicating matters, the terminology itself is interpreted differently by different people and generations and has become political and emotionally charged. Research suggests that a majority of employees consider themselves allies, but don't know how to be effective in that role—a role that is particularly critical in addressing more subtle but pervasive acts of microagression.

Your Task

In your second rotation, you are reporting to the firm's Chief Diversity Officer, who is also the lead consultant for the firm's Diversity and Inclusion practice. You have been asked to develop a pilot diversity allies program to address these issues. The program will be tested "in-house" and, if successful, offered as a service to clients. Specifically, your task is to define the desired group composition (diverse on what basis) and develop a half-day program that guides the group to develop a shared working definition of diversity, identify relevant program success metrics, identify potential challenges and associated training (i.e., conflict management), policies and support networks needed to implement a successful diversity allies program.

Grading Rubric

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
Organization and format	**2 pts** Writing lacks logical organization. It may show some coherence but ideas lack unity. Serious errors and generally is an unorganized	**3 pts** Writing is coherent and logically organized, using a format suitable for the material presented. Some points may be contextually	**4 pts** Writing is coherent and logically organized, using a format suitable for the material presented. Transitions between ideas and	**5 pts** Writing shows high degree of attention to details and presentation of points. Format used enhances understanding of material presented.	**5 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
	format and information.	misplaced and/or stray from the topic. Transitions may be evident but not used throughout the essay. Organization and format used may detract from understanding the material presented.	paragraphs create coherence. Overall unity of ideas is supported by the format and organization of the material presented.	Unity clearly leads the reader to the writer's conclusion and the format and information could be used independently.	
Content	**8 pts** Some but not all required questions are addressed. Content and/or terminology is not properly used or referenced. Little or no original thought is present in the	**12 pts** All required questions are addressed but may not be addressed with thoughtful consideration and/or may not reflect	**16 pts** All required questions are addressed with thoughtful consideration reflecting both proper use of content terminology and	**20 pts** All required questions are addressed with thoughtful in-depth consideration reflecting both proper use of content terminology and	**20 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
	writing. Concepts presented are merely restated from the source, or ideas presented do not follow the logic and reasoning presented throughout the writing.	proper use of content terminology or additional original thought. Additional concepts may not be present and/or may not be properly cited sources.	additional original thought. Some additional concepts may be presented from other properly cited sources, or originated by the author following logic and reasoning they've clearly presented throughout the writing.	additional original thought. Additional concepts are clearly presented from properly cited sources, or originated by the author following logic and reasoning they've clearly presented throughout the writing.	
Development—Critical Thinking	**8 pts** Shows some thinking and reasoning but most ideas are underdeveloped, unoriginal, and/or do not address the	**12 pts** Content indicates thinking and reasoning applied with original thought on a few ideas,	**16 pts** Content indicates original thinking, cohesive conclusions, and developed	**20 pts** Content indicates synthesis of ideas, in-depth analysis and evidence beyond the	**20 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
	questions asked. Conclusions drawn may be unsupported, illogical or merely the author's opinion with no supporting evidence presented.	but may repeat information provided and/ or does not address all of the questions asked. The author presents no original ideas, or ideas do not follow clear logic and reasoning. The evidence presented may not support conclusions drawn.	ideas with sufficient and firm evidence. Clearly addresses all of the questions or requirements asked. The evidence presented supports conclusions drawn.	questions or requirements asked. Original thought supports the topic, and is clearly a well-constructed response to the questions asked. The evidence presented makes a compelling case for any conclusions drawn.	
Grammar, Mechanics, Style	**2 pts** Writing contains many spelling, punctuation, and grammatical errors, making	**3 pts** Some spelling, punctuation, and grammatical errors are present,	**4 pts** Writing is free of most spelling, punctuation, and grammatical errors,	**5 pts** Writing is free of all spelling, punctuation, and grammatical errors and	**5 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
	it difficult for the reader to follow ideas clearly. There may be sentence fragments and run-ons. The style of writing, tone, and use of rhetorical devices disrupts the content. Additional information may be presented but in an unsuitable style, detracting from its understanding.	interrupting the reader from following the ideas presented clearly. There may be sentence fragments and run-ons. The style of writing, tone, and use of rhetorical devices may detract from the content. Additional information may be presented, but in a style of writing that does not support understanding of the content.	allowing the reader to follow ideas clearly. There are no sentence fragments and run-ons. The style of writing, tone, and use of rhetorical devices enhance the content. Additional information is presented in a cohesive style that supports understanding of the content.	written in a style that enhances the reader's ability to follow ideas clearly. There are no sentence fragments and run-ons. The style of writing, tone, and use of rhetorical devices enhance the content. Additional information is presented to encourage and enhance understanding of the content.	

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
				Total:	50 pts

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Chapter 3: Understanding Civility and Cultural Competence

3.1: Introduction

Student Survey

How do you feel about diversity, equity, and inclusion? These questions will help you determine how the chapter concepts relate to you right now. As you are introduced to new concepts and practices, it can be informative to reflect on how your understanding changes over time. We'll revisit these questions at the end of the chapter to see whether your feelings have changed. Take this quick survey to figure it out, ranking questions on a scale of 1–4, 1 meaning "least like me" and 4 meaning "most like me."

- I'm aware of the different categories of diversity and the various populations I may encounter.
- I think we sometimes go too far in trying to be sensitive to different groups.
- I think nearly everybody in our society has equal opportunity.
- It's not my role to ensure equity and inclusiveness among my peers or colleagues.

You can also take the survey anonymously online. (https://riceuniversity.co1.qualtrics.com/jfe/form/SV_cwitmuYbLrbFYYB)

STUDENT PROFILE

"For the vast majority of my life, I thought being an Asian-American—who went through the Palo Alto School District—meant that I was supposed to excel in academics. But, in reality, I did the opposite. I struggled through college, both in classes and in seeking experiences for my future. At first, I thought I was unique in not living up to expectations. But as I met more people from all different backgrounds, I realized my challenges were not unique.

"I began capturing videos of students sharing their educational issues. Like me, many of my peers lack the study skills required to achieve our academic goals. The more I researched and developed videos documenting this lack of skill, the more I realized that student identities are often lost as they learn according to a traditional pedagogy. I began documenting students' narratives and the specific strategies they used to overcome difficulty. Once we can celebrate a diverse student body and showcase their strengths and identities as well as the skills necessary to excel academically, my hope is that students of all backgrounds can begin to feel that they belong."

—**Henry Fan**, Foothill College and San Jose State University

About This Chapter

In this chapter, you will learn about diversity and how it plays a role in personal, civic, academic, and professional aspects of our lives. By the end of the chapter, you should be able to do the following:

- Articulate how diverse voices have been historically ignored or minimized in American civic life, education, and culture.
- Describe categories of identity and experience that contribute to diverse points of view.
- Acknowledge implicit bias and recognize privilege.
- Evaluate statements and situations based on their inclusion of diverse perspectives.

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3.2: What Is Diversity, and Why Is Everybody Talking About It?

QUESTIONS TO CONSIDER

1. Historically, has diversity always been a concern?
2. What does it mean to be civil?
3. Why do people argue about diversity?

What Would Shakespeare Say?

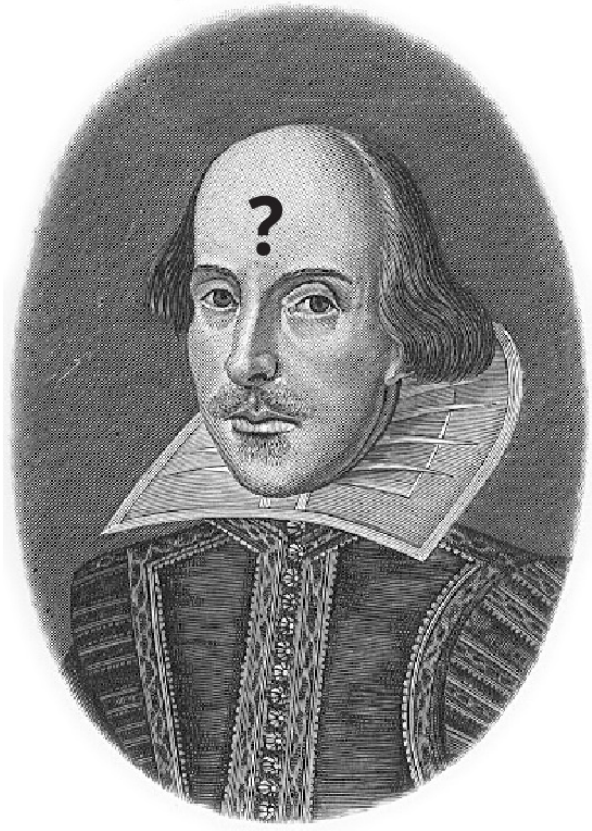


Figure 3.2.1: (Credit: Sourced originally from Helmolt, H.F., ed. History of the World. Dodd, Mead and Company, 1902 / Perry-Castañeda Library, University of Texas at Austin / Wikimedia Commons / Public Domain).

Consider a classroom containing 25 college students and their instructor. In this particular class, all of the students and the instructor share the same racial group—white. In fact, everyone in the class is a white American from the Midwest.

The instructor is leading the class through reading a scene from William Shakespeare's drama *Romeo and Juliet*. As students read their parts, each one is thinking carefully about the role he or she has been given.

One of the male students wonders what it would be like to read the part of Juliet; after all, men originally played the part in Shakespeare's day. The young woman reading Juliet wonders if anyone would object to her taking the role if they knew she was a lesbian. What would it be like, she wonders, if Romeo, her love interest, were also played by a woman? One reader strongly identifies as German American, but he is reading the part of an Italian. Another student has a

grandmother who is African American, but he looks like every other white student in the room. No one recognizes his mixed-race heritage.

After the students finish reading the scene, the instructor announces, “In our classroom, everyone is the same, but these days when Shakespeare is staged, there is a tendency for nontraditional casting. Romeo could be Black, Juliet could be Latina, Lady Montague could be Asian. Do you think that kind of casting would disrupt the experience of seeing the play?”

In this case, the instructor makes the assumption that because everyone in the class *looks* the same, they *are* the same. What did the instructor miss about the potential for diversity in his classroom? Have you ever made a similar mistake?

Diversity is more than what we can recognize from external clues such as race and gender. Diversity includes many unseen aspects of identity, like sexual orientation, political point of view, veteran status, and many other aspects that you may have not considered. To be inclusive and civil within your community, it is essential that you avoid making assumptions about how other people define or identify themselves.

In this chapter, we will discover that each person is more than the sum of surface clues presented to the world. Personal experience, social and family history, public policy, and even geography play a role in how diversity is constructed. We’ll also explore elements of civility and fairness within the college community.

One important objective of civility is to become culturally competent. Culturally competent people understand the complexity of their own personal identity, values, and culture. In addition, they respect the personal identities and values of others who may not share their identity and values. Further, culturally competent people remain open-minded when confronted with new cultural experiences. They learn to relate to and respect difference; they look beyond the obvious and learn as much as they can about what makes each person different and appreciated.

WHAT STUDENTS SAY

1. Do you think the diversity of your school’s student body is reflected in course offerings and campus activities?
    a. Yes
    b. Somewhat
    c. No
2. How comfortable are you when discussing issues of race, sexuality, religion, and other aspects of civility?
    a. Extremely comfortable
    b. Somewhat comfortable
    c. Somewhat uncomfortable
    d. Extremely uncomfortable
3. Do you generally feel welcomed and included on campus?
    a. Yes

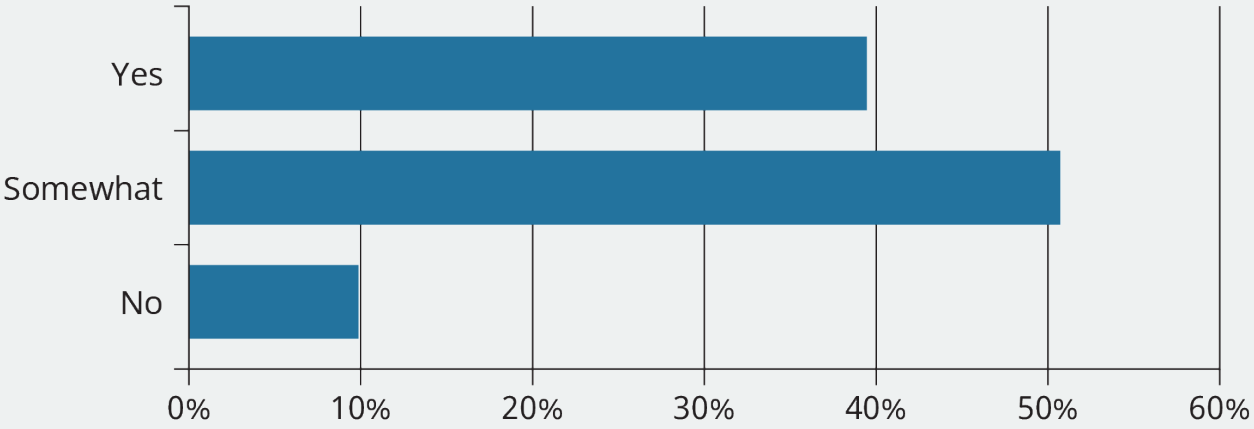
b. No

c. It varies significantly by class or environment.

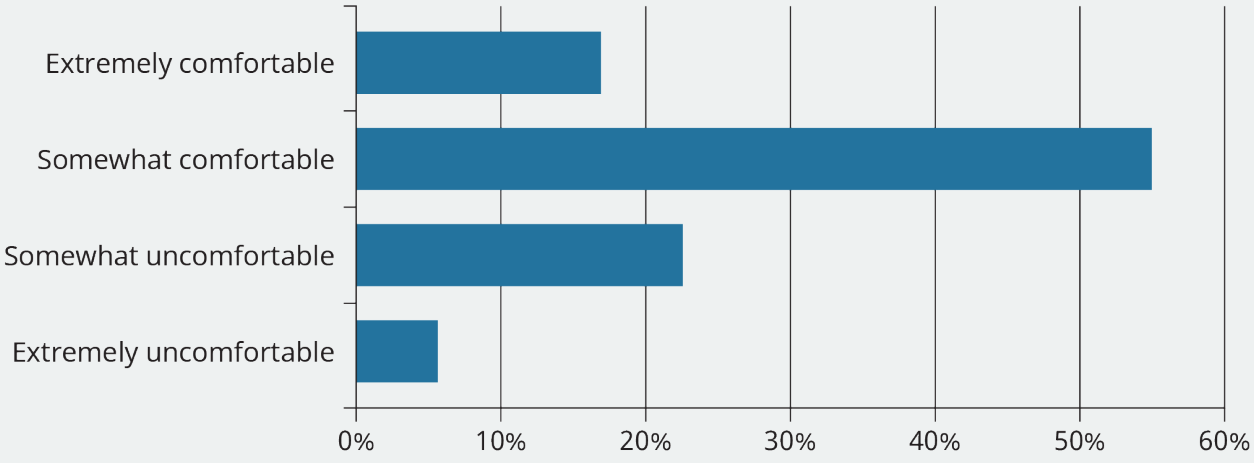
You can also take the anonymous What Students Say surveys (https://riceuniversity.co1.qualtrics.com/jfe/form/SV_7R2QmdiCEjVVsxf) to add your voice to this textbook. Your responses will be included in updates.

Students offered their views on these questions, and the results are displayed in the graphs below.

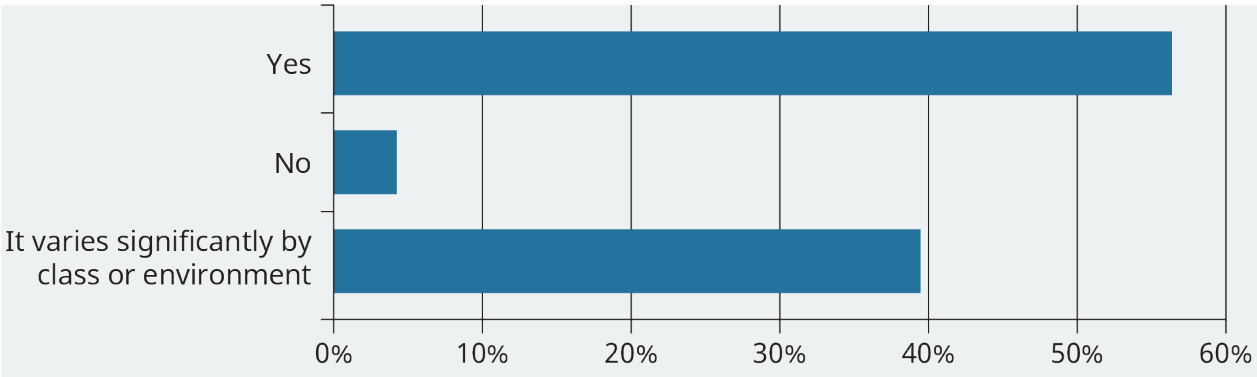
Do you think the diversity of your school's student body is reflected in course offerings and campus activities?



How comfortable are you when discussing issues of race, sexuality, religion, and other aspects of civility?



Do you generally feel welcomed and included on campus?



Why Diversity Matters

The United States of America is viewed the world over as a leader in democracy and democratic ideals. Our nation, young by most standards, continues to evolve to make the freedoms and opportunities available to all. Where the benefits of citizenship have been imperfect, discord over issues related to civil rights and inclusion have often been at the center of the conflict.

To understand the importance of civility and civil engagement, it is necessary to acknowledge our country's history. The United States is a country born out of protest. Colonists protesting what they felt were unfair taxes under King George III was at the foundation of the Revolutionary War. Over time, many groups have been given their civil liberties and equal access to all that our country has to offer through that same spirit of protest and petition.

Figure 3.2.1: (Credit: Carl Campbell / Flickr / Attribution 2.0 Generic (CC-BY 2.0))

The United States is often described as a “melting pot,” a rich mixture made up of people of many colors, religions, abilities, etc. working together to make one great big stew. That is the image generations of Americans grew up learning, and it is a true one. The United States is a nation of immigrants, and cultural influences from around the world have added to its strength.

Historically, however, not all contributions and voices have been acknowledged equally or adequately. Some groups have had to struggle to have their contributions acknowledged, be treated fairly, and be allowed full participation in the civic life of the country. Entire populations of people have been oppressed as a part of the nation’s history, something important for Americans to confront and acknowledge. For example, in what is known as the Trail of Tears, the U.S. government forcibly removed Native Americans from their homelands and made them walk to reservations; some had to travel more than 1,000 miles, and over 10,000 died on the journey. Further, in an act of forced assimilation, Native American children were taken from their families and placed in schools where they were not allowed to practice cultural traditions or speak their Native languages. This practice continued as late as the 1970s. As a result, many Native American languages have been lost or are at risk of being lost.

The slavery of Africans occurred in America for close to 250 years. Much of the wealth in the United States during that time came directly from the labor of enslaved people; however, the enslaved people themselves did not benefit financially. During World War II, Japanese Americans were placed into internment camps and considered a danger to our country because our nation was at war with Japan.

For many years, all women and minority men were traditionally left out of public discourse and denied participation in government, industry, and even cultural institutions such as sports. For example, the United States Supreme Court was founded in 1789; however, the court’s first female justice, Sandra Day O’Connor, was not appointed until 1981, almost 200 years later. Jackie Robinson famously became the first African American major league baseball player in 1947 when he was hired by the Brooklyn Dodgers, although the major leagues were established in 1869, decades earlier. The absence of white women and minorities was not an accident. Their exclusion was based on legal discrimination or unfair treatment.

These are all examples of mistreatment, inequality, and discrimination, and they didn’t end without incredible sacrifice and heroism. The civil rights movement of the 1950s and 1960s and the equal rights movement for women’s rights in the 1970s are examples of how public protests work to bring attention to discriminatory practices and to create change. Because racism, anti-Semitism, sexism, and other forms of bias and intolerance still exist, civil engagement and protests continue, and policies must be constantly monitored. Many people still work to ensure the gains these communities have made in acquiring the rights of full citizenship are not lost.

Diversity refers to differences in the human experience. As different groups have gained in number and influence, our definition of diversity has evolved to embrace many variables that reflect a multitude of different backgrounds, experiences, and points of view, not just race and gender. Diversity takes into account age, socioeconomic factors, ability (such as sight, hearing, and mobility), ethnicity, veteran status, geography, language, sexual orientation, religion, size, and other factors. At one time or another, each group has had to make petitions to the

government for equal treatment under the law and appeals to society for respect. Safeguarding these groups' hard-won rights and public regard maintains diversity and its two closely related factors, *equit*y and *inclusion.*

ACTIVITY

Our rights and protections are often acquired through awareness, effort, and, sometimes, protest. Each one of the following groups has launched protests over discrimination or compromises to their civil rights. Choose three of the groups below and do a quick search on protests or efforts members of the group undertook to secure their rights. To expand your knowledge, choose some with which you are not familiar.

Record the name, time frame, and outcomes of the protest or movements you researched.

The groups are as follows:

- Veterans
- Senior citizens
- Blind or visually impaired people
- Muslims
- Christians
- LGBTQ+ community
- Hispanic/Latinos
- People with intellectual disabilities
- Undocumented immigrants
- Little people
- College students
- Jewish Americans
- Farmworkers
- Wheelchair users

The Role of Equity and Inclusion

Equity plays a major part in achieving fairness in a diverse landscape. Equity gives everyone equal access to opportunity and success. For example, you may have seen interpreters for deaf or hard-of-hearing people in situations where a public official is making an announcement about an impending weather emergency. Providing immediate translation into sign language means that there is no gap between what the public official is saying and when all people receive the information. Simultaneous sign language provides equity. Similarly, many students have learning differences that require accommodations in the classroom. For example, a student with attention-deficit/hyperactivity disorder (ADHD) might be given more time to complete tests or writing assignments. The extra time granted takes into account that students with ADHD process information differently.

If a student with a learning difference is given more time than other students to complete a test, that is a matter of equity. The student is not being given an advantage; the extra time gives them an equal chance at success.

The Americans with Disabilities Act (ADA, 1990) is a federal government policy that addresses equity in the workplace, housing, and public places. The ADA requires "reasonable accommodations" so that people with disabilities have equal access to the same services as people without disabilities. For example, wheelchair lifts on public transportation, automatic doors, entrance ramps, and elevators are examples of accommodations that eliminate barriers of participation for people with certain disabilities.

Without the above accommodations, those with a disability may justly feel like second-class citizens because their needs were not anticipated. Further, they might have to use their own resources to gain equal access to services although their tax dollars contribute to providing that same access and service to other citizens.

Equity levels the playing field so that everyone's needs are anticipated and everyone has an equal starting point. However, understanding equity is not enough.

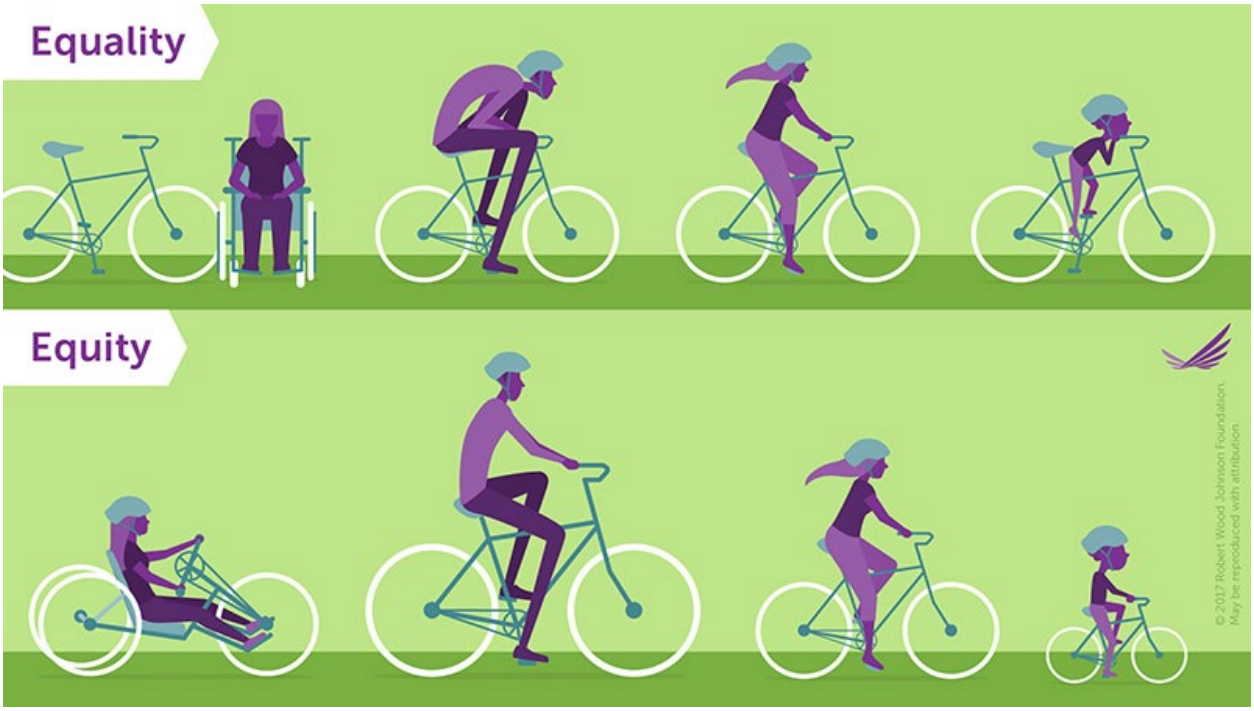


Figure 3.2.2: Equality is a meaningful goal, but it can leave people with unmet needs; equity is more empowering and fair. In the equality portion of the graphic, people all sizes and a person who uses a wheelchair are all given the same bicycle, which is unusable for most. In the equity portion, each person gets a bicycle specifically designed for them, enabling them to successfully ride it. Credit: Robert Wood Johnson Foundation / Custom License: "May be Produced with Attribution")

When equity is properly considered, there is also inclusion. *Inclusion* means that there are a multiplicity of voices, skills, and interests represented in any given situation. Inclusion has

played a major role in education, especially in terms of creating inclusion classrooms and inclusive curricula. In an inclusion classroom, students of different skill levels study together. For example, students with and without developmental disabilities study in the same classroom. Such an arrangement eliminates the stigma of the "special education classroom" where students were once segregated. In addition, in inclusion classrooms, all students receive support when needed. Students benefit from seeing how others learn. In an inclusive curriculum, a course includes content and perspectives from underrepresented groups. For example, a college course in psychology might include consideration of different contexts such as immigration, incarceration, or unemployment in addition to addressing societal norms.

Inclusion means that these voices of varied background and experience are integrated into discussions, research, and assignments rather than ignored.

Our Country Is Becoming More Diverse

You may have heard the phrase "the browning of America," meaning it is predicted that today's racial minorities will, collectively, be the majority of the population in the future. The graph from the Pew Research Center projects that by the year 2065, U.S. demographics will have shifted significantly. In 2019, the white population made up just over 60% of the population. In 2065, the Pew Research Center predicts that whites will be approximately 46% of the population. The majority of Americans will be the non-white majority, 54% Hispanic/Latinos, Blacks, and Asians.

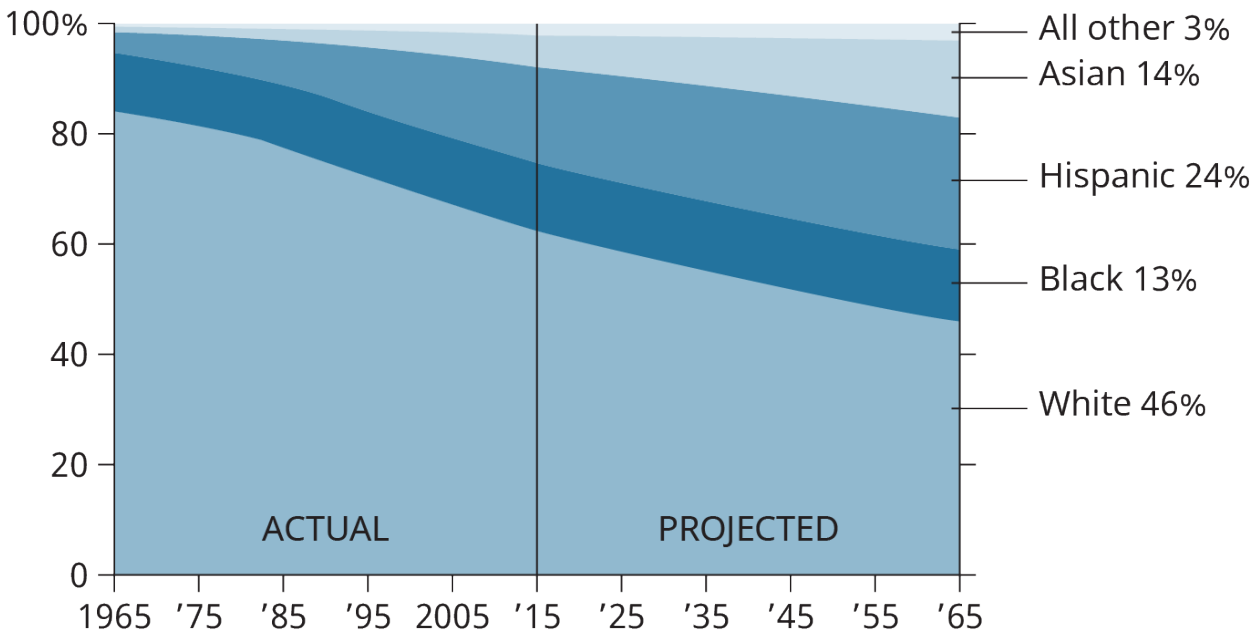


Figure 3.2.3: United States demographics (or statistical characteristics of populations) are changing rapidly. In just over 35 years, the country as a whole will be a "majority minority" nation, with ethnic/racial minorities making up more than half of the population. (Credit: Based on work by the Pew Research Center.)

What does this mean? It could mean that the United States begins accepting Spanish as a mainstream language since the Hispanic/Latino population will be significantly larger. It could mean a changing face for local governments. It could mean that our country will elect its second non-white president. Beyond anything specific, the shifting demographics of the United States could mean greater attention is paid to diversity awareness, equity, and inclusion.

ANALYSIS QUESTION

How should the United States prepare for its projected demographic shift? What changes do you suppose will take place as part of the "browning of America"?

Education: Equity for All

Education has been one of the most significant arenas for social change related to our rights as Americans. And the effects of that change have significantly impacted other power dynamics in society. You need look no further than the landmark case *Brown v. Board of Education of Topeka* (1954) to see how our nation has responded passionately in civil and uncivil ways to appeals for equity and inclusion in public education.

For much of the 20th century, African Americans lived under government-sanctioned separation better known as segregation. Not only were schools segregated, but Jim Crow laws allowed for legal separation in transportation, hospitals, parks, restaurants, theaters, and just about every aspect of public life. These laws enacted that there be “whites only” water fountains and restrooms. Only white people could enter the front door of a restaurant or sit on the main level of a movie theater, while African Americans had to enter through the back door and sit in the balcony. The segregation also included Mexican Americans and Catholics, who were forced to attend separate schools. *Brown v. Board of Education* was a landmark Supreme Court case that challenged the interpretation of the 14th Amendment to the Constitution of the United States. The case involved the father of Linda Brown suing the Topeka, Kansas, board of education for denying his daughter the right to attend an all-white school. Oliver Brown maintained that segregation left his Black community with inferior schools, a condition counter to the equal protection clause contained in Section I of the 14th Amendment:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

There was widespread heated opposition to desegregated education across the country. Passions were even more severe after *Brown v. Board of Education* was won by the plaintiff on appeal to the United States Supreme Court. In effect, the case changed the power dynamics in America by leveling the playing field for education. No longer were white schools (and their better resources) legally segregated. In principle, there was equity—equal access.

Debates in the courtrooms surrounding *Brown* were passionate but professional. Protests and debate in those communities directly affected by the decision, especially in the South, were intense, violent confrontations that demonstrated the height of incivility. One thing you may notice about uncivil behavior is the difficulty most have looking back on those actions.

Figure 3.2.4: After the Brown v. Board of Education decision, Americans pursued their rights for equal education in other districts. In Arkansas, a group of teenagers, which would come to be known as the Little Rock Nine, were blocked from entering a formerly whites-only school. Facing angry protestors, the state governor, and even the National Guard, the nine students finally took their rightful place in the school after a judge ruled in their favor and President Eisenhower sent the 101st Airborne Division to secure the situation. (Credit: Courtesy of the National Archives, sourced from The US Army / Flickr / Attribution 2.0 Generic (CC-BY))

Educational institutions like colleges and school districts are critically important spaces for equity and inclusion, and debates around them remain challenging. Transgender students in America's schools face discrimination, harassment, and bullying, which causes nearly 45 percent of LGBTQ+ to feel unsafe because of their gender expression and 60 percent to feel unsafe due to their sexual orientation. Many of these students miss school or experience significant stress, which usually has a negative impact on their grades, participation, and overall success. In essence, this hostility creates inequality. Regardless of individual state or district laws on bathroom use and overall accommodation, federal law protects *all* students from discrimination, especially that based on categories such as gender. But implementation of these federal protections varies, and, in general, many outside the transgender community do not fully understand, empathize with, or support transgender rights.

How can the circumstances improve for transgender students? In other societal changes throughout our nation's history, court decisions, new legislation, protests, and general public opinion combined to right past wrongs and provide justice and protection for mistreated people. For example, in 2015, the Supreme Court upheld the right to same-sex marriage under the 14th Amendment. Just as African Americans publicly debated and protested educational inequality, the gay community used discussion, protest, and debate to sway public and legal opinion. Proponents of gay marriage faced fervent argument against their position based on religion and culture; like other minority groups, they were confronted with name-calling, job insecurity, family division, religious isolation, and physical confrontation. And as has often been the case, success in achieving marriage equality eventually came through the courts.

Legal remedies are significant, but can take a very long time. Before they see success in the courts or legislatures, transgender students in America's schools will continue to undergo harsh treatment. Their lives and education will remain very difficult until people from outside their community better understand their situation.

Debates: Civility vs. Incivility

Healthy debate is a desirable part of a community. In a healthy debate, people are given room to explain their point of view. In a healthy airing of differences, people on opposing sides of an argument can reach common ground and compromise or even agree to disagree and move on.

However, incivility occurs when people are not *culturally competent*. An individual who is not culturally competent might make negative assumptions about others' values, lack an open mindset, or be inflexible in thinking. Instead of being tolerant of different points of view, they may try to shut down communication by not listening or by keeping someone with a different point of view from being heard at all. Out of frustration, a person who is uncivil may resort to name-calling or discrediting another person only with the intention of causing confusion and division within a community. Incivility can also propagate violence. Such uncivil reaction to difficult issues is what makes many people avoid certain topics at all costs. Instead of seeking out diverse communities, people retreat to safe spaces where they will not be challenged to hear opposing opinions or have their beliefs contested.

Debates on difficult or divisive topics surrounding diversity, especially those promoting orchestrated change, are often passionate. People on each side may base their positions on deeply held beliefs, family traditions, personal experience, academic expertise, and a desire to orchestrate change. With such a strong foundation, emotions can be intense, and debates can become uncivil.

Even when the disagreement is based on information rather than personal feelings, discussions can quickly turn to arguments. For example, in academic environments, it's common to find extremely well-informed arguments in direct opposition to each other. Two well-known economics faculty members from your college could debate for hours on financial policies, with each professor's position backed by data, research, and publications. Each person could feel very strongly that they are right and the other person is wrong. They may even feel that the approach proposed by their opponent would actually do damage to the country or to certain groups of

people. But for this debate—whether it occurs over lunch or on an auditorium stage—to remain civil, the participants need to maintain certain standards of behavior.

ACTIVITY

1. Describe a time when you could not reach an agreement with someone on a controversial issue.
2. Did you try to compromise, combining your points of view so that each of you would be partially satisfied?
3. Did either of you shut down communication? Was ending the conversation a good choice? Why or why not?

Civility is a valued practice that takes advantage of cultural and political systems we have in place to work through disagreements while maintaining respect for others' points of view. Civil behavior allows for a respectful airing of grievances. The benefit of civil discussion is that members of a community can hear different sides of an argument, weigh evidence, and decide for themselves which side to support.

You have probably witnessed or taken part in debates in your courses, at social events, or even at family gatherings. What makes people so passionate about certain issues? First, some may have a personal stake in an issue, such as abortion rights. Convincing other people to share their beliefs may be intended to create a community that will protect their rights. Second, others may have deeply held beliefs based on faith or cultural practices. They argue based on deeply held moral and ethical beliefs. Third, others may be limited in their background knowledge about an issue but are able to speak from a "script" of conventional points of view. They may not want to stray from the script because they do not have enough information to extend an argument.

Rules for Fair Debate

Figure 3.2.5: You'll participate in classroom or workplace debate throughout your academic or professional career. Civility is

important to productive discussions, and will lead to worthwhile outcomes. (Credit: Creative Sustainability / Flickr / Attribution 2.0 Generic (CC-BY 2.0))

The courtroom and the public square are not the only places where serious debate takes place. Every day we tackle tough decisions that involve other people, some of whom have strong opposing points of view. To be successful in college, you will need to master sound and ethical approaches to argument, whether it be for a mathematical proof or an essay in a composition class.

You probably already know how to be sensitive and thoughtful when giving feedback to a family member or friend. You think about their feelings and the best way to confront your disagreement without attacking them. Of course, sometimes it's easier to be less sensitive with people who love you no matter what. Still, whether in a classroom, a workplace, or your family dinner table, there are rules for debating that help people with opposing points of view get to the heart of an issue while remaining civil:

1. Avoid direct insults and personal attacks—the quickest way to turn someone away from your discussion is to attack them personally. This is actually a common logical fallacy called ad hominem, which means "to the person," and it means to attack the person rather than the issue.
2. Avoid generalizations and extreme examples—these are two more logical fallacies called bandwagon, or ad populum, and reduction to absurdity, or argumentum ad absurdum. The first is when you argue that everyone is doing something so it must be right. The second is when you argue that a belief or position would lead to an absurd or extreme outcome.
3. Avoid appealing to emotions rather than facts—it's easy to get emotional if you're debating something about which you feel passionate. Someone disagreeing with you can feel like a personal affront. This fallacy, called argument to compassion, appeals to one's emotions and happens when we mistake feelings for facts. While strong and motivating, our feelings are not great arbiters of the truth.
4. Avoid irrelevant arguments—sometimes it's easy to change the subject when we're debating, especially if we feel flustered or like we're not being heard. Irrelevant conclusion is the fallacy of introducing a topic that may or may not be sound logic but is not about the issue under debate.
5. Avoid appeal to bias—you may not have strong opinions on every topic but, no doubt, you are opinionated about things that matter to you. This strong view can create a bias, or a leaning toward an idea or belief. While there's nothing wrong with having a strong opinion, you must be mindful to ensure that your bias doesn't create prejudice. Ask yourself if your biases influence the ways in which you interact with other people and with ideas that differ from your own.
6. Avoid appeal to tradition—just because something worked in the past or was true in the past does not necessarily mean that it is true today. It's easy to commit this fallacy, as we often default to "If it ain't broke, don't fix it." It's appealing because it seems to be common sense. However, it ignores questions such as whether the existing or old policy truly works as well as it could and if new technology or new ways of thinking can offer an improvement. Old ways can certainly be good ways, but not simply because they are old.
7. Avoid making assumptions—often, we think we know enough about a topic or maybe even more than the person talking, so we jump ahead to the outcome. We assume we know what

they're referring to, thinking about, or even imagining, but this is a dangerous practice because it often leads to misunderstandings. In fact, most logical fallacies are the result of assuming.

8. Strive for root cause analysis—getting at the root cause of something means to dig deeper and deeper until you discover why a problem or disagreement occurred. Sometimes, the most obvious or immediate cause for a problem is not actually the most significant one. Discovering the root cause can help to resolve the conflict or reveal that there isn't one at all.
9. Avoid obstinacy—in the heat of a debate, it's easy to dig in your heels and refuse to acknowledge when you're wrong. Your argument is at stake, and so is your ego. However, it's important to give credit where it's due and to say you're wrong if you are. If you misquoted a fact or made an incorrect assumption, admit to it and move on.
10. Strive for resolution—while some people like to debate for the sake of debating, in the case of a true conflict, both parties should seek agreement, or at least a truce. One way to do this is to listen more than you speak. Listen, listen, listen: you'll learn and perhaps make better points of your own if you deeply consider the other point of view.

ANALYSIS QUESTION

Have you ever witnessed incivility in person or an argument in the news? Briefly describe what happened. Why do you think individuals are willing to shut down communication over issues they are passionate about?

Online Civility

The Internet is the watershed innovation of our time. It provides incredible access to information and resources, helping us to connect in ways inconceivable just a few decades ago. But it also presents risks, and these risks seem to be changing and increasing at the same rate as technology itself. Because of our regular access to the Internet, it's important to create a safe, healthy, and enjoyable online space.

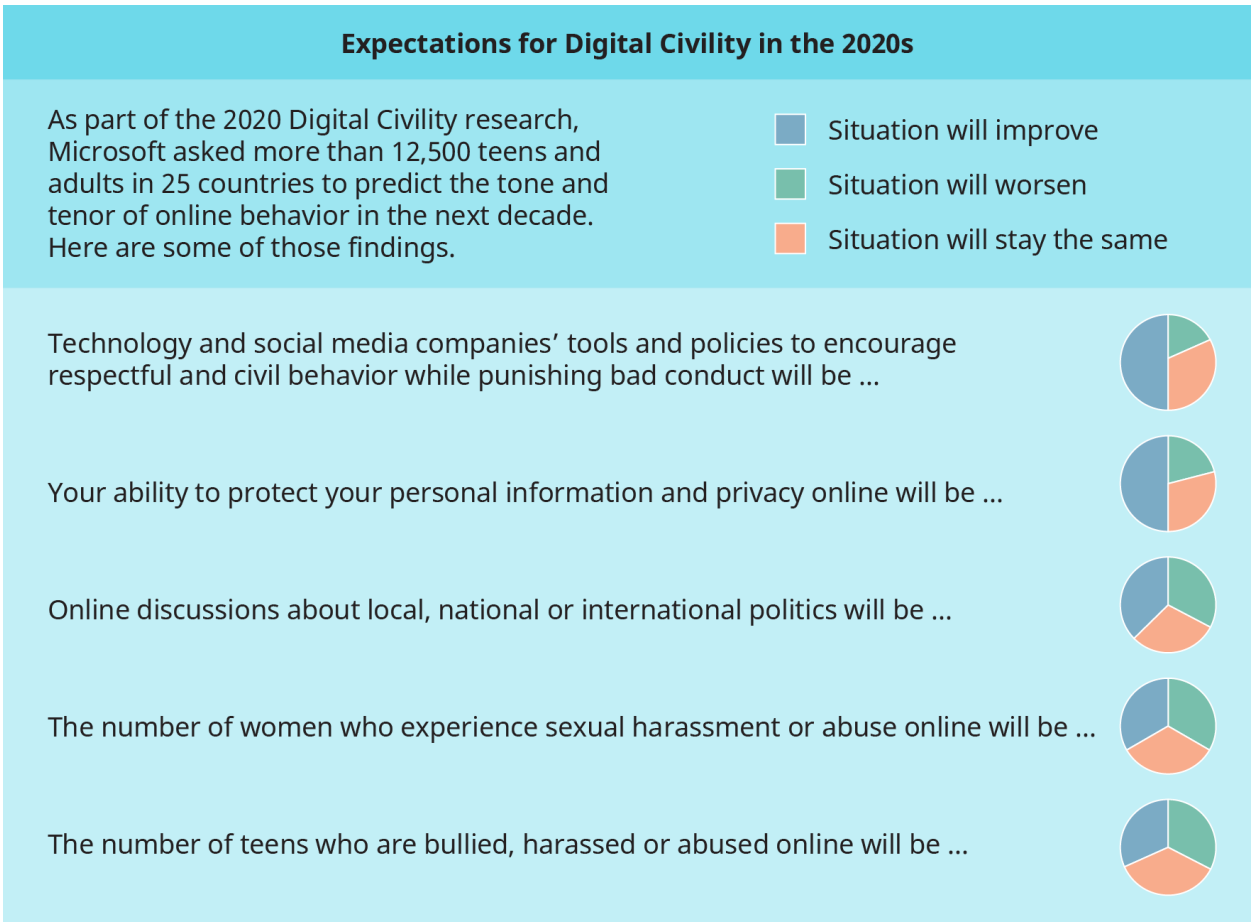

Expectations for Digital Civility in the 2020s
As part of the 2020 Digital Civility research, Microsoft asked more than 12,500 teens and adults in 25 countries to predict the tone and tenor of online behavior in the next decade. Here are some of those findings.
Situation will improve
Situation will worsen
Situation will stay the same
Technology and social media companies' tools and policies to encourage respectful and civil behavior while punishing bad conduct will be ...
Your ability to protect your personal information and privacy online will be ...
Online discussions about local, national or international politics will be ...
The number of women who experience sexual harassment or abuse online will be ...
The number of teens who are bullied, harassed or abused online will be ...

Figure 3.2.6: Microsoft's Digital Civility Research survey asked people their opinions on the future of online behavior and communication. While in some cases, the respondents thought circumstances would improve, predictions about the others, such as harassment and bullying, are more bleak. (Credit: Based on work from Microsoft, "Expectations for Digital Civility 2020.")

In the survey conducted by Microsoft, "nearly 4 in 10 [respondents] feel unwanted online contact (39%), bullying (39%) and unwelcome sexual attention (39%) will worsen [in 2020]. A slightly smaller percentage (35%) expect people's reputations, both professional and personal, will continue to be attacked online. One-quarter (25%) of respondents see improvement across each of these risk areas in 2020."

Digital civility is the practice of leading with empathy and kindness in all online interactions and treating each other with respect and dignity. This type of civility requires users to fully understand and appreciate potential harms and to follow the new rules of the digital road. You can find a discussion on best practices for online communication, often referred to as Netiquette, in Chapter 8 on Communicating. Following, are some basic guidelines to help exercise digital civility:

- **Live the "Golden Rule"** and treat others with respect and dignity both online and off.
- **Respect differences** of culture, geography, and opinion, and when disagreements surface, engage thoughtfully.

- **Pause before replying** to comments or posts you disagree with, and ensure responses are considerate and free of name-calling and abuse.
- **Stand up for yourself and others** if it's safe and prudent to do so.

3.2: What Is Diversity, and Why Is Everybody Talking About It? is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

3.3: Categories of Diversity

QUESTIONS TO CONSIDER

1. What is identity?
2. Can a person have more than one identity?
3. Can identity be ambiguous?
4. What are fluidity and intersectionality?

The multiple roles we play in life—student, sibling, employee, roommate, for example—are only a partial glimpse into our true identity. Right now, you may think, "I really don't know what I want to be," meaning you don't know what you want to do for a living, but have you ever tried to define yourself in terms of the sum of your parts?

Social roles are those identities we assume in relation to others. Our social roles tend to shift based on where we are and who we are with. Taking into account your social roles as well as your nationality, ethnicity, race, friends, gender, sexuality, beliefs, abilities, geography, etc., who are you?

Who Am I?

Popeye, a familiar 20th-century cartoon character, was a sailor-philosopher. He declared his own identity in a circular manner, landing us right where we started: "I am what I am and that's all that I am." Popeye proves his existence rather than help us identify him. It is his title, "The Sailor Man," that tells us how Popeye operates in the social sphere.

According to the American Psychological Association, personal identity is an individual's sense of self-defined by (a) a set of physical, psychological, and interpersonal characteristics that is not wholly shared with any other person and (b) a range of affiliations (e.g., ethnicity) and social roles. Your identity is tied to the most dominant aspects of your background and personality. It determines the lens through which you see the world and the lens through which you receive information.

ACTIVITY

Complete the following statement using no more than four words:

I am _____.

It is difficult to narrow down our identity to just a few options. One way to complete the statement would be to use gender and geography markers. For example, "I am a male New Englander" or "I am an American woman." Assuming they are true, no one can argue against those identities, but do those statements represent everything or at least most things that identify the speakers? Probably not.

Try finishing the statement again by using as many words as you wish.

I am _____.

If you ended up with a long string of descriptors that would be hard for a new acquaintance to manage, don't worry. Our identities are complex and reflect that we lead interesting and multifaceted lives.

To better understand identity, consider how social psychologists describe it. Social psychologists, those who study how social interactions take place, often categorize identity into four types: personal identity, role identity, social identity, and collective identity.

Personal identity captures what distinguishes one person from another based on life experiences. No two people, even identical twins, live the same life.

Role identity defines how we interact in certain situations. Our roles change from setting to setting, and so do our identities. At work you may be a supervisor; in the classroom you are a peer working collaboratively; at home, you may be the parent of a 10-year-old. In each setting, your bubbly personality may be the same, but how your coworkers, classmates, and family see you is different.

Social identity shapes our public lives by our awareness of how we relate to certain groups. For example, an individual might relate to or "identify with" Korean Americans, Chicagoans, Methodists, and Lakers fans. These identities influence our interactions with others. Upon meeting someone, for example, we look for connections as to how we are the same or different. Our awareness of who we are makes us behave a certain way in relation to others. If you identify as a hockey fan, you may feel an affinity for someone else who also loves the game.

Collective identity refers to how groups form around a common cause or belief. For example, individuals may bond over similar political ideologies or social movements. Their identity is as much a physical formation as a shared understanding of the issues they believe in. For example, many people consider themselves part of the collective energy surrounding the #MeToo movement. Others may identify as fans of a specific type of entertainment such as Trekkies, fans of the Star Trek series.

"I am large. I contain multitudes." Walt Whitman

In his epic poem *Song of Myself*, Walt Whitman writes, "Do I contradict myself? Very well then I contradict myself (I am large. I contain multitudes.)." Whitman was asserting and defending his shifting sense of self and identity. Those lines importantly point out that our identities may evolve over time. What we do and believe today may not be the same tomorrow. Further, at any one moment, the identities we claim may seem at odds with each other. Shifting identities are a part of personal growth. While we are figuring out who we truly are and what we believe, our sense of self and the image that others have of us may be unclear or ambiguous.

Many people are uncomfortable with identities that do not fit squarely into one category. How do you respond when someone's identity or social role is unclear? Such ambiguity may challenge your sense of certainty about the roles that we all play in relationship to one another. Racial,

ethnic, and gender ambiguity, in particular, can challenge some people's sense of social order and social identity.

When we force others to choose only one category of identity (race, ethnicity, or gender, for example) to make ourselves feel comfortable, we do a disservice to the person who identifies with more than one group. For instance, people with multiracial ancestry are often told that they are too much of one and not enough of another.

The actor Keanu Reeves has a complex background. He was born in Beirut, Lebanon, to a White English mother and a father with Chinese-Hawaiian ancestry. His childhood was spent in Hawaii, Australia, New York, and Toronto. Reeves considers himself Canadian and has publicly acknowledged influences from all aspects of his heritage. Would you feel comfortable telling Keanu Reeves how he must identify racially and ethnically?

There is a question many people ask when they meet someone whom they cannot clearly identify by checking a specific identity box. Inappropriate or not, you have probably heard people ask, "What are you?" Would it surprise you if someone like Keanu Reeves shrugged and answered, "I'm just me"?

Malcom Gladwell is an author of five New York Times best-sellers and is hailed as one of Foreign Policy's Top Global Thinkers. He has spoken on his experience with identity as well. Gladwell has a Black Jamaican mother and a White Irish father. He often tells the story of how the perception of his hair has allowed him to straddle racial groups. As long as he kept his hair cut very short, his fair skin obscured his Black ancestry, and he was most often perceived as White. However, once he let his hair grow long into a curly Afro style, Gladwell says he began being pulled over for speeding tickets and stopped at airport check-ins. His racial expression carried serious consequences.

Figure 3.3.1: Writer Malcolm Gladwell's racial expression has impacted his treatment by others and his everyday experiences. (Credit: Kris Krug, Pop!Tech / Flickr / Attribution 2.0 Generic (CC-BY 2.0))

Gender

More and more, gender is also a diversity category that we increasingly understand to be less clearly defined. Some people identify themselves as gender fluid or non-binary. "Binary" refers to the notion that gender is only one of two possibilities, male or female. Fluidity suggests that there is a range or continuum of expression. Gender fluidity acknowledges that a person may vacillate between male and female identity.

Asia Kate Dillon is an American actor and the first non-binary actor to perform in a major television show with their roles on *Orange is the New Black* and *Billions*. In an article about the actor, a reporter conducting the interview describes his struggle with trying to describe Dillon to the manager of the restaurant where the two planned to meet. The reporter and the manager struggle with describing someone who does not fit a pre-defined notion of gender identity. Imagine the situation: You're meeting someone at a restaurant for the first time, and you need to describe the person to a manager. Typically, the person's gender would be a part of the description, but what if the person cannot be described as a man or a woman?

Figure 3.3.2: Asia Kate Dillon is a non-binary actor best known for their roles on *Orange Is the New Black* and *Billions*. (Credit: *Billions* Official Youtube Channel / Wikimedia Commons / Attribution 3.0 Unported (CC-BY 3.0))

Within any group, individuals obviously have a right to define themselves; however, collectively, a group's self-determination is also important. The history of Black Americans demonstrates a progression of self-determined labels: Negro, Afro-American, colored, Black, African American. Similarly, in the non-binary community, self-described labels have evolved. Nouns such as *genderqueer* and pronouns such as *hir, ze,* and *Mx*. (instead of *Miss, Mrs. or Mr.)* have entered not only our informal lexicon, but the dictionary as well.

Merriam-Webster's dictionary includes a definition of "they" that denotes a non-binary identity, that is, someone who fluidly moves between male and female identities.

Transgender men and women were assigned a gender identity at birth that does not fit their true identity. Even though our culture is increasingly giving space to non-heteronormative (straight) people to speak out and live openly, they do so at a risk. Violence against gay, non-binary, and transgender people occurs at more frequent rates than for other groups.

To make ourselves feel comfortable, we often want people to fall into specific categories so that our own social identity is clear. However, instead of asking someone to make us feel comfortable, we should accept the identity people choose for themselves. Cultural competency includes respectfully addressing individuals as they ask to be addressed.

Gender Pronoun Examples

Subjective	Objective	Possessive	Reflexive	Example
She	Her	Hers	Herself	She is speaking.

Subjective	Objective	Possessive	Reflexive	Example
				I listened to her. The backpack is hers.
He	Him	His	Himself	He is speaking. I listened to him. The backpack is his.
They	Them	Theirs	Themself	They are speaking. I listened to them. The backpack is theirs.
Ze	Hir/Zir	Hirs/Zirs	Hirself/Zirself	Ze is speaking. I listened to hir. The backpack is zirs.

The website Transstudent.org provides educational resources such as the above graphic for anyone seeking clarity on gender identity. Note that these are only examples of some gender pronouns, not a complete list.

Intersectionality

The many layers of our multiple identities do not fit together like puzzle pieces with clear boundaries between one piece and another. Our identities overlap, creating a combined identity in which one aspect is inseparable from the next.

The term intersectionality was coined by legal scholar Kimberlé Crenshaw in 1989 to describe how the experience of Black women was a unique combination of gender and race that could not be divided into two separate identities. In other words, this group could not be seen solely as women or solely as Black; where their identities overlapped is considered the “intersection,” or crossroads, where identities combine in specific and inseparable ways.

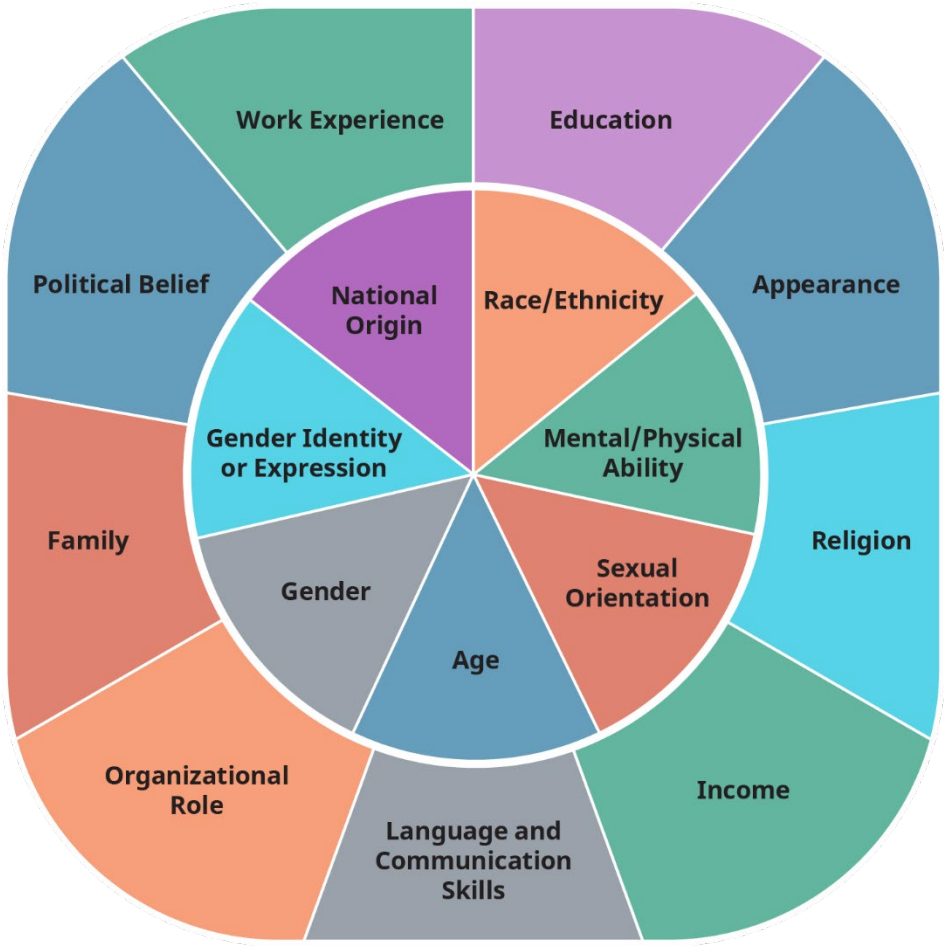


Figure 3.3.3: Our identities are formed by dozens of factors, sometimes represented in intersection wheels. Consider the subset of identity elements represented here. Generally, the outer ring are elements that may change relatively often, while the inner circle are often considered more permanent. (There are certainly exceptions.) How does each contribute to who you are, and how would possible change alter your self-defined identity?

Intersectionality and awareness of intersectionality can drive societal change, both in how people see themselves and how they interact with others. That experience can be very inward-facing, or can be more external. It can also lead to debate and challenges. For example, the term "Latinx" is growing in use because it is seen as more inclusive than "Latino/Latina," but some people—including scholars and advocates—lay out substantive arguments against its use. While the debate continues, it serves as an important reminder of a key element of intersectionality: Never assume that all people in a certain group or population feel the same way. Why not? Because people are more than any one element of their identity; they are defined by more than their race, color, geographic origin, gender, or socio-economic status. The overlapping aspects of each person's identity and experiences will create a unique perspective.

ANALYSIS QUESTION

Consider the intersectionality of race, gender, and sexuality; religion, ethnicity, and geography; military experience; age and socioeconomic status; and many other ways our identities overlap. Consider how these overlap in you.

Do you know people who talk easily about their various identities? How does it inform the way you interact with them?

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3.4: Navigating the Diversity Landscape

QUESTIONS TO CONSIDER

1. What happens when we make assumptions about others?
2. Are microaggressions honest mistakes?
3. How do I know if I have a diversity "problem"?
4. How important is diversity awareness in the college classroom?

Avoid Making Assumptions

By now you should be aware of the many ways diversity can be both observable and less apparent. Based on surface clues, we may be able to approximate someone's age, weight, and perhaps their geographical origin, but even with those observable characteristics, we cannot be sure about how individuals define themselves. If we rely too heavily on assumptions, we may be buying into stereotypes, or generalizations.

Stereotyping robs people of their individual identities. If we buy into stereotypes, we project a profile onto someone that probably is not true. Prejudging people without knowing them, better known as prejudice or bias, has consequences for both the person who is biased and the individual or group that is prejudged. In such a scenario, the intimacy of real human connections is lost. Individuals are objectified, meaning that they only serve as symbolic examples of who we assume they are instead of the complex, intersectional individuals we know each person to be.

Stereotyping may be our way of avoiding others' complexities. When we stereotype, we do not have to remember distinguishing details about a person. We simply write their stories for ourselves and let those stories fulfill who we expect those individuals to be. For example, a hiring manager may project onto an Asian American the stereotype of being good at math, and hire her as a researcher over her Hispanic counterpart. Similarly, an elementary school teacher may recruit an Indian American sixth-grader to the spelling bee team because many Indian American students have won national tournaments in the recent past. A real estate developer may hire a gay man as an interior designer because he has seen so many gay men performing this job on television programs. A coach chooses a White male student to be a quarterback because traditionally, quarterbacks have been White men. In those scenarios, individuals of other backgrounds, with similar abilities, may have been overlooked because they do not fit the stereotype of who others suspect them to be.

Earlier in this chapter, equity and inclusion were discussed as going hand in hand with achieving civility and diversity. In the above scenarios, equity and inclusion are needed as guiding principles for those with decision-making power who are blocking opportunity for nontraditional groups. Equity might be achieved by giving a diverse group of people access to internships to demonstrate their skills. Inclusion might be achieved by assembling a hiring or recruiting committee that might have a better chance of seeing beyond stereotypical expectations.

APPLICATION

Often, our assumptions and their impacts are not life-changing, but they can be damaging to others and limiting to our own understanding. Consider the following scenarios, and answer the questions that follow.

Scenario 1:

During an in-class conversation about a new mission to explore Mars, two classmates offer opinions.

- Student A says, "We should focus on this planet before we focus on others."
- Student B responds immediately with, "If we're going to stop climate change, we'll probably find the answer through science related to space travel."

What assumption did student B make about student A's point? What else, aside from climate change, could student A have been considering?

Scenario 2:

For an important group project, an instructor designates teams of six students and gives them time to set up their work schedule for the assignment. One group of students, most of whom don't know each other well, agrees to meet two nights later. They initially propose to get together in the library, but at the last moment one member suggests an off-campus restaurant; several of the others agree right away and move on to other topics. The remaining two students look at each other uncomfortably. One interjects, suggesting they go back to the original idea of meeting in the library, but the others are already getting up to leave. It's clear that two of the students are uncomfortable meeting at the restaurant.

What might be the reason that two of the students are not comfortable meeting over dinner? What assumptions did the others make?

Being civil and inclusive does not require a deep-seated knowledge of the backgrounds and perspectives of everyone you meet. That would be impossible. But avoiding assumptions and being considerate will build better relationships and provide a more effective learning experience. It takes openness and self-awareness and sometimes requires help or advice, but learning to be sensitive—practicing assumption avoidance—is like a muscle you can strengthen.

Be Mindful of Microaggressions

Whether we mean to or not, we sometimes offend people by not thinking about what we say and the manner in which we say it. One danger of limiting our social interactions to people who are from our own social group is in being insensitive to people who are not like us. The term *microaggression* refers to acts of insensitivity that reveal our inherent biases, cultural incompetency, and hostility toward someone outside of our community. Those biases can be toward race, gender, nationality, or any other diversity variable. The individual on the receiving end of a microaggression is reminded of the barriers to complete acceptance and understanding in the relationship. Let's consider an example.

Ann is new to her office job. Her colleagues are friendly and helpful, and her first two months have been promising. She uncovered a significant oversight in a financial report, and, based on her attention to detail, was put on a team working with a large client. While waiting in line at the cafeteria one day, Ann's new boss overhears her laughing and talking loudly with some colleagues. He then steps into the conversation, saying, "Ann, this isn't a night at one of your clubs. Quiet down." As people from the nearby tables look on, Ann is humiliated and angered.

What was Ann's manager implying? What could he have meant by referring to "*your* clubs?" How would you feel if such a comment were openly directed at you? One reaction to this interaction might be to say, "So what? Why let other people determine how you feel? Ignore them." While that is certainly reasonable, it may ignore the pain and invalidation of the experience. And even if you could simply ignore some of these comments, there is a compounding effect of being frequently, if not constantly, barraged by such experiences.

Consider the table below, which highlights common examples of microaggressions. In many cases, the person speaking these phrases may not mean to be offensive. In fact, in some cases, the speaker might think they are being *nice*. However, appropriate terminology and other attitudes or acceptable descriptions change all the time. Before saying something, consider how a person could take the words differently than you meant them. Emotional intelligence and empathy can help understand another's perspective.

Microaggressions

Category	Microaggression	Why It's Offensive
Educational Status or Situation	"You're an athlete; you don't need to study."	Stereotypes athletes and ignores their hard work.
	"You don't get financial aid; you must be rich.	"Even an assumption of privilege can be invalidating.
	"Did they have honors classes at your high school?"	Implies that someone is less prepared or intelligent based on their geography.

Category	Microaggression	Why It's Offensive
Race, Ethnicity, National Origin"	You speak so well for someone like you."	Implies that people of a certain race/ethnicity can't speak well.
	"No, where are you *really* from?"	Calling attention to someone's national origin makes them feel separate."
	You must be good at _____."	Falsely connects identity to ability.
	"My people had it so much worse than yours did."	Makes assumptions and diminishes suffering/difficulty.
	"I'm not even going to try your name. It looks too difficult."	Dismisses a person's culture and heritage.
	"It's so much easier for Black people to get into college."	Assumes that merit is not the basis for achievement.
Gender and Gender Identity	"They're *so* emotional."	Assumes a person cannot be emotional and rational.
	"I guess you can't meet tonight because you have to take care of your son?"	Assumes a parent (of any gender) cannot participate.

Category	Microaggression	Why It's Offensive
	"I don't get all this pronoun stuff, so I'm just gonna call you what I call you."	Diminishes the importance of gender identity; indicates a lack of empathy.
	"I can't even tell you used to be a woman."	Conflates identity with appearance, and assumes a person needs someone else's validation.
	"You're too good-looking to be so smart."	Connects outward appearance to ability.
Sexual Orientation	"I support you; just don't throw it in my face."	Denies another person's right to express their identity or point of view.
	"You seem so rugged for a gay guy."	Stereotypes all gay people as being "not rugged," and could likely offend the recipient.
	"I might try being a lesbian."	May imply that sexual orientation is a choice.
	"I can't even keep track of all these new categories."	Bisexual, pansexual,

Category	Microaggression	Why It's Offensive
	"You can't just love whomever you want; pick one."	asexual, and other sexual orientations are just as valid and deserving of respect as more binary orientations.
Age	"Are you going to need help with the software?"	May stereotype an older person as lacking experience with the latest technology.
	"Young people have it so easy nowadays."	Makes a false comparison between age and experience.
	"Okay, boomer."	Dismisses an older generation as out of touch.
Size	"I bet no one messes with you."	Projects a tendency to be aggressive onto a person of large stature.
	"You are so cute and tiny."	Condescending to a person of small stature.
	"I wish I was thin and perfect like you."	Equates a person's size with character.

Category	Microaggression	Why It's Offensive
Ability	(To a person using a wheelchair) "I wish I could sit down wherever I went."	Falsely assumes a wheelchair is a luxury; minimizes disabilities.
	"You don't have to complete the whole test. Just do your best."	Assumes that a disability means limited intellectual potential.
	"I'm blind without my glasses."	Equating diminished capacity with a true disability.

Have you made statements like these, perhaps without realizing the offense they might cause? Some of these could be intended as compliments, but they could have the unintended effect of diminishing or invalidating someone. (Credit: Modification of work by Derald Wing Sue.)

Everyone Has a Problem: Implicit Bias

One reason we fall prey to stereotypes is our own implicit bias. Jo Handelsman and Natasha Sakraney, who developed science and technology policy during the Obama administration, defined implicit bias.

According to Handelsman and Sakraney, "A lifetime of experience and cultural history shapes people and their judgments of others. Research demonstrates that most people hold unconscious, implicit assumptions that influence their judgments and perceptions of others. Implicit bias manifests in expectations or assumptions about physical or social characteristics dictated by stereotypes that are based on a person's race, gender, age, or ethnicity. People who intend to be fair, and believe they are egalitarian, apply biases unintentionally. Some behaviors that result from implicit bias manifest in actions, and others are embodied in the absence of action; either can reduce the quality of the workforce and create an unfair and destructive environment."

The notion of bias being "implicit," or unconsciously embedded in our thoughts and actions, is what makes this characteristic hard to recognize and evaluate. You may assume that you hold no racial bias, but messages from our upbringing, social groups, and media can feed us negative racial stereotypes no matter how carefully we select and consume information. Further, online environments have algorithms that reduce our exposure to diverse points of view. Psychologists generally agree that implicit bias affects the judgements we make about others.

Harvard University's Project Implicit website offers an interactive implicit association test that measures individual preference for characteristics such as weight, skin color, and gender. During the test, participants are asked to match a series of words and images with positive or negative associations. Test results, researchers suggest, can indicate the extent to which there is implicit bias in favor of or against a certain group. Completing a test like this might reveal unconscious feelings you were previously aware you had.

The researchers who developed the test make clear that there are limitations to its validity and that for some, the results of the test can be unsettling. The test makers advise not taking the test if you feel unprepared to receive unexpected results.

APPLICATION

Take the Project Implicit (https://implicit.harvard.edu/implicit/takeatest.html) test and write a brief passage about your results.

Do you think the results accurately reflect your attitude toward the group you tested on? Can you point to any actions or thoughts you have about the group you tested on that are or are not reflected in the test results? Will you change any behaviors or try to think differently about the group you tested on based on your results? Why or why not?

Cultural Competency in the College Classroom

We carry our attitudes about gender, ethnicity, sexual orientation, age, and other diversity categories with us wherever we go. The college classroom is no different than any other place. Both educators and students maintain their implicit bias and are sometimes made uncomfortable by interacting with people different than themselves. Take for example a female freshman who has attended a school for girls for six years before college. She might find being in the classroom with her new male classmates a culture shock and dismiss male students' contributions to class discussions. Similarly, a homeschooled student may be surprised to find that no one on campus shares his religion. He may feel isolated in class until he finds other students of similar background and experience. Embedded in your classroom may be peers who are food insecure, undocumented, veterans, atheist, Muslim, or politically liberal or conservative. These identities may not be visible, but they still may separate and even marginalize these members of your community. If, in the context of classroom conversations, their perspectives are overlooked, they may also feel very isolated.

In each case, the students' assumptions, previous experience with diversity of any kind, and implicit bias surface. How each student reacts to the new situation can differ. One reaction might be to self-segregate, that is, locate people they believe are similar to them based on how they look, the assumption being that those people will share the same academic skills, cultural interests, and personal values that make the student feel comfortable. The English instructor at the beginning of this chapter who assumed all of his students were the same demonstrated how this strategy could backfire.

You do not have to be enrolled in a course related to diversity, such as Asian American literature, to be concerned about diversity in the classroom. Diversity touches all aspects of our lives and can enter a curriculum or discussion at any time because each student and the instructor bring multiple identities and concerns into the classroom. Ignoring these concerns, which often reveal themselves as questions, makes for an unfulfilling educational experience.

In higher education, diversity includes not only the identities we have discussed such as race and gender, but also academic preparation and ability, learning differences, familiarity with technology, part-time status, language, and other factors students bring with them. Of course, the instructor, too, brings diversity into the classroom setting. They decide how to incorporate diverse perspectives into class discussions, maintain rules of civility, choose inclusive materials to study or reference, receive training on giving accommodations to students who need them, and acknowledge their own implicit bias. If they are culturally competent, both students and instructors are juggling many concerns.

How do you navigate diversity in the college classroom?

Academic Freedom Allows for Honest Conversations

Academic freedom applies to the permission instructors and students have to follow a line of intellectual inquiry without the fear of censorship or sanction. There are many heavily contested intellectual and cultural debates that, for some, are not resolved. A student who wants to argue against prevailing opinion has the right to do so based on academic freedom. Many point to a liberal bias on college campuses. Conservative points of view on immigration, education, and even science, are often not accepted on campus as readily as liberal viewpoints. An instructor or student who wants to posit a conservative idea, however, has the right to do so because of academic freedom.

Uncomfortable conversations about diversity are a part of the college classroom landscape. For example, a student might use statistical data to argue that disparities in degrees for men and women in chemistry reflect an advantage in analytical ability for men. While many would disagree with that theory, the student could pursue that topic in a discussion or paper as long as they use evidence and sound, logical reasoning.

"I'm just me."

Remember the response to the "What are you?" question for people whose racial or gender identity was ambiguous? "I'm just me" also serves those who are undecided about diversity issues or those who do not fall into hard categories such as feminist, liberal, conservative, or religious. Ambiguity sometimes makes others feel uncomfortable. For example, if someone states she is a Catholic feminist unsure about abortion rights, another student may wonder how to compare her own strong pro-life position to her classmate's uncertainty. It would be much easier to know exactly which side her classmate is on. Some people straddle the fence on big issues, and that is OK. You do not have to fit neatly into one school of thought. Answer your detractors with "I'm just me," or tell them if you genuinely don't know enough about an issue or are not ready to take a strong position.

Seek Resources and Projects That Contribute to Civility

A culturally responsive curriculum addresses cultural and ethnic differences of students. Even in classrooms full of minority students, the textbooks and topics may only reflect American cultural norms determined by the mainstream and tradition. Students may not relate to teaching that never makes reference to their socio-economic background, race, or their own way of thinking and expression. Educators widely believe that a culturally responsive curriculum, one that integrates relatable contexts for learning and reinforces cultural norms of the students receiving the information, makes a difference.

The K-12 classroom is different than the college classroom. Because of academic freedom, college instructors are not required to be culturally inclusive. (They *are* usually required to be respectful and civil, but there are different interpretations of those qualities.) Because American colleges are increasingly more sensitive to issues regarding diversity, faculty are compelled to be inclusive. Still, diversity is not always adequately addressed. In his TED "Talk Can Art Amend History?" the artist Titus Kaphar tells the story of the art history class that influenced him to become an artist and provides an example of this absence of diversity in the college classroom. Kaphar explains that his instructor-led his class through important periods and artists throughout history, but failed to spend time on Black artists, something that Kaphar was anxiously awaiting. The instructor stated that there was just not enough time to cover it. While the professor probably did not intend to be noninclusive, her choice resulted in just that. Kaphar let his disappointment fuel his passion and mission to amend the representation of Black figures in historical paintings. His work brings to light the unnoticed Black figures that are too often overlooked.

Figure 3.4.1: In *Twisted Tropes,* Titus Kaphar reworks a painting to bring a Black figure to the forefront of an arrangement in which she had previously been marginalized. (Credit: smallcurio / Flickr / Attribution 2.0 Generic (CC-BY 2.0))

Any student can respond to a lack of diversity in a curriculum as Titus Kaphar did. Where you find diversity missing, when possible, fill in the gaps with research papers and projects that broaden your exposure to diverse perspectives. Take the time to research contributions in your

field by underrepresented groups. Discover the diversity issues relevant to your major. Are women well-represented in your field? Is there equity when it comes to access to opportunities such as internships? Are veterans welcomed? Do the academic societies in your discipline have subgroups or boards focused on diversity and equity? (Most do.) Resources for expanding our understanding and inclusion of diversity issues are all around us.

Directly Confront Prejudice

To draw our attention to possible danger, the Department of Homeland Security has adopted the phrase, "If you see something, say something." That credo can easily be adopted to confront stereotypes and bias: "If you hear something, say something." Academic freedom protects students and instructors from reprisal for having unpopular opinions, but prejudice is never correct, nor should it be tolerated. Do not confuse hate speech, such as sexist language, anti-Semitism, xenophobia, and acts that reflect those points of view, with academic freedom. Yes, the classroom is a place to discuss these attitudes, but it is not a place to direct those sentiments toward fellow students, educators, or society in general.

Most higher education institutions have mission statements and codes of conduct that warn students about engaging in such behavior. The consequences for violators are usually probation and possibly dismissal. Further policies such as affirmative action and Title IX are instituted to evaluate and maintain racial and gender equity.

APPLICATION

No one knows when a racist or sexist attack is coming. The Barnard Center for Research on Women has created a video suggesting ways to be an ally to people victimized by intolerant behavior. (https://bcrw.barnard.edu/videos/dont-be-a-bystander-6-tips-for-responding-to-racist-attacks/)

Affirmative Action and Higher Education

Affirmative action is a policy that began during the John F. Kennedy administration to eliminate discrimination in employment. Since that time, it has expanded as a policy to protect from discrimination in a number of contexts, including higher education. Most notably in higher education, affirmative action has been used to create equity in access. Institutions have used affirmative action as a mandate of sorts in admission policies to create diverse student bodies. Colleges sometimes overlook traditional admissions criteria and use socioeconomic and historical disparities in education equity as criteria to admit underrepresented groups. Affirmative action is a federal requirement to be met by entities that contract with the federal government; most colleges are federal government contractors and must adhere to the policy by stating a timeline by which its affirmative action goals are met.

Many interpret "goals" as quotas, meaning that a certain number of students from underrepresented groups would be admitted, presumably to meet affirmative action requirements. Opposition to affirmative action in college admissions has been pursued in several well-known court cases.

Regents of the University of California v. Bakke

This 1978 case resulted in a U.S. Supreme Court decision to allow race to be used as one of the criteria in higher education admission policies as long as quotas were not established and race was not the only criterion for admission. The case stemmed from Alan Bakke, an applicant to the University of California at Davis Medical School, suing the university because he was not admitted but had higher test scores and grades than minority students who had been accepted. Lawyers for Bakke referenced the same equal protection clause of the 14th Amendment used to desegregate public schools in *Brown v. Board of Education*. The "reverse discrimination" denied him equal protection under the law.

Fisher v. University of Texas

In 2016, the U.S. Supreme Court decided another affirmative action case regarding Fisher v. University of Texas. Abigail Fisher also argued that she had been denied college admission based on race. The case ended in favor of the university. Justice Kennedy, in the majority opinion, wrote:

> ***"A university is in large part defined by those intangible "qualities which are incapable of objective measurement but which make for greatness." Considerable deference is owed to a university in defining those intangible characteristics, like student body diversity, that are central to its identity and educational mission."***

In each of the above landmark cases, affirmative action in college admission policies were upheld. However, cases of reverse discrimination in college admission policies continue to be pursued.

ANALYSIS QUESTION

Examine your college's code of conduct. You may find it in your student handbook, as part of an office of community standards or engagement, or by simply searching your college site. How does the code of conduct protect academic freedom but guard against hate speech, prejudice, and intolerance?

Title IX and Higher Education

Title IX of the Education Amendments of 1972 states, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance." As with affirmative action, Title IX applies to institutions that receive federal funding, such as public and charter schools, for-profit schools, libraries, and museums in the United States and its territories.

According to the Office for Civil Rights, educational programs and activities receiving federal funds must operate in a nondiscriminatory manner. Title IX addresses recruitment, admissions,

and counseling; financial assistance; athletics; sex-based harassment; treatment of pregnant and parenting students; discipline; single-sex education; and employment.

Before the enactment of Title IX, there were few if any protections provided for women college students. To give some perspective, consider this description of the circumstances:

“Young women were not admitted into many colleges and universities, athletic scholarships for women were rare, and math and science was a realm reserved for boys. Girls square danced instead of playing sports, studied home economics instead of training for 'male-oriented' (read: higher-paying) trades. Girls could become teachers and nurses, but not doctors or principals; women rarely were awarded tenure and even more rarely appointed college presidents. There was no such thing as sexual harassment because 'boys will be boys,' after all, and if a student got pregnant, her formal education ended. Graduate professional schools openly discriminated against women.”

The protections of Title IX have been invoked in college athletics to ensure women’s athletic programs are sustained. In addition, schools must make efforts to prevent sexual harassment and violence. Gender discrimination under Title IX extends to the protection of transgender students so that they are treated as the gender they identify with.

ANALYSIS QUESTION

Based on the cases against affirmative action in higher education, are admissions policies that use race, along with other factors, as admissions criteria fair? What other options do you think would create equity in admissions?

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3.5: Inclusivity and Civility: What Role Can I Play?

QUESTIONS TO CONSIDER

1. Is it my fault that I have privilege?
2. How long will diversity, equity, and inclusion efforts continue?
3. What is to be gained by cultural competency?

Privilege Is Not Just for White People

Privilege is a right or exemption from liability or duty granted as a special benefit or advantage. Oppression is the result of the "use of institutional privilege and power, wherein one person or group benefits at the expense of another," according to the University of Southern California Suzanne Dworak Peck School of Social Work.

Just as everyone has implicit bias, everyone has a certain amount of privilege, too. For example, consider the privilege brought by being a certain height. If someone's height is close to the average height, they likely have a privilege of convenience when it comes to many day-to-day activities. A person of average height does not need assistance reaching items on high store shelves and does not need adjustments to their car to reach the brake pedal. There's nothing wrong with having this privilege, but recognizing it, especially when considering others who do not share it, can be eye-opening and empowering.

Wealthy people have privilege of not having to struggle economically. The wealthy can build retirement savings, can afford to live in the safest of neighborhoods, and can afford to pay out of pocket for their children's private education. People with a college education and advanced degrees are privileged because a college degree allows for a better choice of employment and earning potential. Their privilege doesn't erase the hard work and sacrifice necessary to earn those degrees, but the degrees often lead to advantages. And, yes, White people are privileged over racial minorities. Remember Malcolm Gladwell's explanation of how he was treated when people assumed he was White as opposed to how people treated him when they assumed he was Black?

It is no one's fault that they may have privilege in any given situation. In pursuit of civility, diversity, equity, and inclusion, the goal is to not exploit privilege but to share it. What does that mean? It means that when given an opportunity to hire a new employee or even pick someone for your study group, you make an effort to be inclusive and not dismiss someone who has not had the same academic advantages as you. Perhaps you could mentor a student who might otherwise feel isolated. Sharing your privilege could also mean recognizing when diversity is absent, speaking out on issues others feel intimidated about supporting, and making donations to causes you find worthy.

In pursuit of civility, diversity, equity, and inclusion, the goal is to not exploit privilege but to share it.

When you are culturally competent, you become aware of how your privilege may put others at a disadvantage. With some effort, you can level the playing field without making yourself vulnerable to falling behind.

APPLICATION

Think about a regular activity such as going to a class. In what ways are you privileged in that situation? How can you share your privilege with others?

"Eternal vigilance is the price of civility."

The original statement reads, "Eternal vigilance is the price of liberty." History sometimes credits that statement to Thomas Jefferson and sometimes to Wendell Holmes. Ironically, no one was paying enough attention to document it accurately. Still, the meaning is clear—if we relax our standards, we may lose everything.

Civility is like liberty; it requires constant attention. We have to adjust diversity awareness, policies, and laws to accommodate the ever-changing needs of society. Without the vigilance of civil rights workers, society could have lapsed back into the Jim Crow era. Without activists such as Betty Friedan, Gloria Steinem, and Flo Kennedy remaining vigilant, women might not have made the gains they did in the 1970s. Constant attention is still needed because in the case of women's earning power, they only make about 80 cents for every dollar a man makes. Constant vigilance requires passion and persistence. The activism chronologies of Native Americans, African Americans, Asian Americans, the LGBTQ+ community, immigrants, students, labor, and other groups is full of stops and starts, twists and turns that represent adjustments to their movements based on the shifting needs of younger generations. As long as there are new generations of these groups, we will need to pursue diversity, equity, and inclusion.

Your Future and Cultural Competency

Where will you be in five years? Will you own your own business? Will you be a stay-at-home parent? Will you be making your way up the corporate ladder of your dream job? Will you be pursuing an advanced degree? Maybe you will have settled into an entry-level job with good benefits and be willing to stay there for a while. Wherever life leads you in the future, you will need to be culturally competent. Your competency will be a valuable skill not only because of the increasing diversity and awareness in America, but also because we live in a world with increasing global connections.

If you do not speak a second language, try to learn one. If you can travel, do so, even if it's to another state or region of the United States. See how others live in order to understand their experience and yours. To quote Mark Twain, "Travel is fatal to prejudice, bigotry, and narrow-mindedness." The more we expose ourselves to different cultures and experiences, the more understanding and tolerance we tend to have.

The United States is not perfect in its practice of diversity, equity, and inclusion. Still, compared to much of the world, Americans are privileged on a number of fronts. Not everyone can pursue their dreams as freely as Americans do. Our democratic elections and representative government give us a role in our future.

Understanding diversity and being culturally competent will make for a better future for everyone.

3.5: Inclusivity and Civility: What Role Can I Play? is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

3.6: Summary

Understanding diversity, especially in the context of our country's history, is an important part of being an engaged citizen who can help us to adapt to a changing world. Diversity goes hand in hand with the concepts of equity and inclusion, which increase the chances of equal opportunity and representation. Sometimes creating inclusive communities upsets the social order with which people are familiar. Change can be difficult, and people are passionate. These passions can disrupt communities and communication with uncivil behavior, or people can "fight fair" and use strategies that allow for the smooth exchange of ideas.

Everyone has a personal identity made up of various aspects and experiences—intersectionality. Some elements of identity place people in a diversity category. Some categories are expansive and well understood; others are new and may face scrutiny. Policies and laws have been put in place to protect underrepresented citizens from discrimination. These standards are constantly being challenged to make sure that they allow for the shifting demographics of the United States and shifting values of its citizens.

Cultural competency, which includes our ability to adapt to diversity, is a valuable skill in our communities and workplaces. The more culturally competent we are, the more we can help safeguard diversity and make equitable and inclusive connections on a global scale.

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3.7: Career Connection

Keisha went to a temp agency to sign up for part-time work. The person in charge there gave her several tests on office skills. She checked Keisha's typing speed, her ability to handle phone calls, and her writing skills. Keisha also took a grammar test and a test about how to handle disputes in the office. The tester also had Keisha answer questions about whether it was OK to take home office supplies and other appropriate things to do and not to do.

The tester told Keisha that she scored very well on the evaluations, but she never called Keisha back for a job or even an interview. Keisha knows that she presented herself well, but wonders if she was not called back because she wears her hair in dreadlocks or because she has been told that her name sounds African American?

REFLECTION QUESTIONS

- Can this student say that she was discriminated against?
- What would you do to determine why you were not called back for a job?
- Should Keisha ask about how her name and appearance were received?

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3.8: Rethinking

Revisit the questions you answered at the beginning of the chapter, and consider one option you learned in this chapter that might make you rethink how you answered each one. Has this chapter prompted you to consider changing any of your feelings or practices?

Rank the following questions on a scale of 1–4, where 1 = “least like me” and 4 = “most like me.”

- I'm aware of the different categories of diversity and the various populations I may encounter.
- I think we sometimes go too far in trying to be sensitive to different groups.
- I think nearly everybody in our society has equal opportunity.
- It’s not my role to ensure equity and inclusiveness among my peers or colleagues.

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3.9: Where Do You Go From Here?

This chapter touched on many elements of civility and diversity, and mentioned a wide array of groups, identities, and populations. But the chapter certainly did not explore every concept or reflect every group you may encounter. In a similar way, you can't know everything about everyone, but you can build cultural competency and understanding to make people feel included and deepen your abilities and relationships.

Sometimes learning about one group or making one person feel comfortable can be as important as addressing a larger population. To that end, consider researching or discussing one of the following topics to increase your level of civility and understanding:

- Appropriate terminology and ways to address members of certain populations. For example, ways to properly describe people with certain disabilities, or discuss issues around racial or gender identity.
- Discussions or debates related to civility and intersectionality, such as whether "Latinx" should be used instead of "Latino/Latina," or whether certain sports team mascots can be considered offensive.
- Major historical figures or events related to a certain group.
- Academic majors and research centers/groups related to aspects of diversity.
- Historical events at your college or in your city related to civil rights.

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Unit 2: Diversity Groups and Categories: Part A

Chapter 4: Introduction to Groups, Race, and Ethnicity

1.

- 4.1: Introduction
- 4.2: Racial, Ethnic, and Minority Groups
- 4.3: Theoretical Perspectives on Race and Ethnicity
- 4.4: Prejudice, Discrimination, and Racism
- 4.5: Intergroup Relationships
- 4.6: Race and Ethnicity in the United States
- 4.7: Key Terms
- 4.8: Section Summary
- 4.9: Section Quiz
- 4.10: Short Answer
- 4.11: Further Research
- 4.12: References

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4.1: Introduction

1.

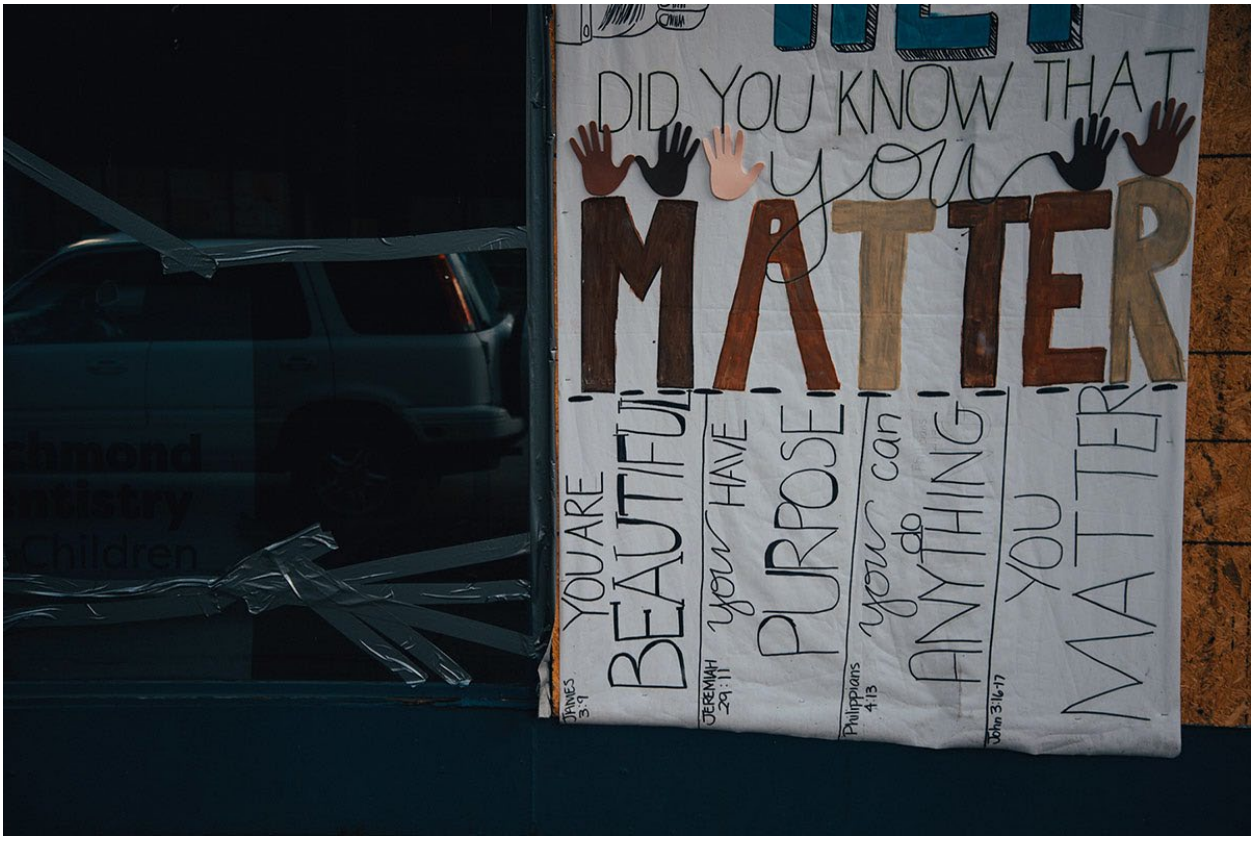

Figure \PageIndex{1}: The juxtaposition of anger and hope. Over a window broken during protests in Richmond, Virginia, the business owner placed a sign that reads "Did You Know That You Matter. You are beautiful. You have purpose. You can do anything. You matter," and is accompanied with bible verses. (Credit: I threw a guitar a him/flickr)

Trayvon Martin was a seventeen-year-old Black teenager. On the evening of February 26, 2012, he was visiting with his father and his father's fiancée in the Sanford, Florida multi-ethnic gated community where his father's fiancée lived. Trayvon went on foot to buy a snack from a nearby convenience store. As he was returning, George Zimmerman, a White Hispanic man and the community's neighborhood watch program coordinator, noticed him. In light of a recent rash of break-ins, Zimmerman called the police to report a person acting suspiciously, which he had done on many other occasions. During the call, Zimmerman said in reference to suspicious people, "[expletive] punks. Those [expletive], they always get away." The 911 operator told Zimmerman not to follow the teen, as was also stated in the police neighborhood watch guidelines that had been provided to Zimmerman. But Zimmerman did follow the teen, and, soon after, they had a physical confrontation. Several people in the community heard yelling, cries for help, and saw two people on the ground. According to Zimmerman, Martin attacked him, and in the ensuing scuffle, Zimmerman shot and killed Martin (CNN Library 2021).

A public outcry followed Martin's death. There were allegations of **racial profiling**—the use of race alone to determine whether detain or investigate someone. As part of the initial investigation, Zimmerman was extensively interviewed by police, but was released under Florida's "Stand Your Ground" Law, which indicated police could not arrest him for his actions. About six weeks later, Zimmerman was arrested and charged with second-degree murder by a special prosecutor, Angela Corey, who had been appointed by Florida's governor. In the ensuing trial, he was found not guilty (CNN Library 2021).

The shooting, the public response, and the trial that followed offer a snapshot of the sociology of race. Do you think race played a role in Martin's death? Do you think race had an influence on the initial decision not to arrest Zimmerman, or on his later acquittal? Does society fear Black men, leading to racial profiling at an institutional level?

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4.2: Racial, Ethnic, and Minority Groups

Learning Objectives

By the end of this section, you should be able to:

1. Understand the difference between race and ethnicity
2. Define a majority group (dominant group)
3. Define a minority group (subordinate group)

While many students first entering a sociology classroom are accustomed to conflating the terms "race," "ethnicity," and "minority group," these three terms have distinct meanings for sociologists. The idea of race refers to superficial physical differences that a particular society considers significant, while ethnicity describes shared culture. And the term "minority groups" describe groups that are subordinate, or that lack power in society regardless of skin color or country of origin. For example, in modern U.S. history, the elderly might be considered a minority group due to a diminished status that results from popular prejudice and discrimination against them. Ten percent of nursing home staff admitted to physically abusing an elderly person in the past year, and 40 percent admitted to committing psychological abuse (World Health Organization 2011). In this chapter, we focus on racial and ethnic minorities.

What Is Race?

A human **race** is a grouping of humankind based on shared physical or social qualities that can vary from one society to another.

Historically, the concept of race has changed across cultures and eras, and has eventually become less connected with ancestral and familial ties, and more concerned with superficial physical characteristics. In the past, theorists developed categories of race based on various geographic regions, ethnicities, skin colors, and more. Their labels for racial groups have connoted regions or skin tones, for example.

German physician, zoologist, and anthropologist Johann Friedrich Blumenbach (1752-1840) introduced one of the famous groupings by studying human skulls. Blumenbach divided humans into five races (MacCord 2014):

- Caucasian or White race: people of European, Middle Eastern, and North African origin
- Ethiopian or Black race: people of sub-Saharan Africans origin (sometimes spelled Aethiopian)
- Malayan or Brown race: people of Southeast Asian origin and Pacific Islanders
- Mongolian or Yellow race: people of all East Asian and some Central Asian origin
- American or Red race: people of North American origin or American Indians

Over time, descriptions of race like Blumenbach's have fallen into disuse, and the **social construction of race** is a more accepted way of understanding racial categories. Social science organizations including the American Association of Anthropologists, the American Sociological Association, and the American Psychological Association have all officially rejected

explanations of race like those listed above. Research in this school of thought suggests that race is not biologically identifiable and that previous racial categories were based on pseudoscience; they were often used to justify racist practices (Omi and Winant 1994; Graves 2003). For example, some people used to think that genetics of race determined intelligence. While this idea was mostly put to rest in the later 20th Century, it resurged several times in the past 50 years, including the widely read and cited 1994 book, *The Bell Curve*. Researchers have since provided substantial evidence that refutes a biological-racial basis for intelligence, including the widespread closing of IQ gaps as Black people gained more access to education (Dickens 2006). This research and other confirming studies indicate that any generally lower IQ among a racial group was more about *nurture* than *nature*, to put it into the terms of the Socialization chapter.

While many of the historical considerations of race have been corrected in favor of more accurate and sensitive descriptions, some of the older terms remain. For example, it is generally unacceptable and insulting to refer to Asian people or Native American people with color-based terminology, but it is acceptable to refer to White and Black people in that way. In 2020, a number of publications announced that they would begin capitalizing the names of races, though not everyone used the same approach (Seipel 2020). This practice comes nearly a hundred years after sociologist and leader W.E.B. Du Bois drove newsrooms to capitalize "Negro," the widely used term at the time. And, finally, some members of racial groups (or ethnic groups, which are described below) "reclaim" terms previously used to insult them (Rao 2018). These examples are more evidence of the social construction of race, and our evolving relationships among people and groups.

What Is Ethnicity?

Ethnicity is sometimes used interchangeably with race, but they are very different concepts. **Ethnicity** is based on shared culture—the practices, norms, values, and beliefs of a group that might include shared language, religion, and traditions, among other commonalities. Like race, the term ethnicity is difficult to describe and its meaning has changed over time. And as with race, individuals may be identified or self-identify with ethnicities in complex, even contradictory, ways. For example, ethnic groups such as Irish, Italian American, Russian, Jewish, and Serbian might all be groups whose members are predominantly included in the “White” racial category. Ethnicity, like race, continues to be an identification method that individuals and institutions use today—whether through the census, diversity initiatives, nondiscrimination laws, or simply in personal day-to-day relations.

In some cases, ethnicity is incorrectly used as a synonym for national origin, but those constructions are technically different. National origin (itself sometimes confused with nationality) has to do with the geographic and political associations with a person's birthplace or residence. But people from a nation can be of a wide range of ethnicities, often unknown to people outside of the region, which leads to misconceptions. For example, someone in the United States may, with no ill-intent, refer to all Vietnamese people as an ethnic group. But Vietnam is home to 54 formally recognized ethnic groups.

Adding to the complexity: Sometimes, either to build bridges between ethnic groups, promote civil rights, gain recognition, or other reasons, diverse but closely associated ethnic groups may

develop a "pan-ethnic" group. For example, the various ethnic groups and national origins of people from Vietnam, Cambodia, Laos, and adjoining nations, who may share cultural, linguistic, or other values, may group themselves together in a collective identity. If they do so, they may not seek to erase their individual ethnicities, but finding the correct description and association can be challenging and depend on context. The large number of people who make up the Asian American community may embrace their collective identity in the context of the United States. However, that embrace may depend on people's ages, and may be expressed differently when speaking to different populations (Park 2008). For example, someone who identifies as Asian American while at home in Houston may not refer to themselves as such when they visit extended family in Japan. In a similar manner, a grouping of people from Mexico, Central America and South America—often referred to as Latinx, Latina, or Latino—may be embraced by some and rejected by others in the group (Martinez 2019).

What Are Minority Groups?

Sociologist Louis Wirth (1945) defined a **minority group** as "any group of people who, because of their physical or cultural characteristics, are singled out from the others in the society in which they live for differential and unequal treatment, and who therefore regard themselves as objects of collective discrimination." The term minority connotes discrimination, and in its sociological use, the term **subordinate group** can be used interchangeably with the term minority group, while the term **dominant group** is often substituted for the group that represents rulers or is in the majority who can access power and privilege in a given society. These definitions correlate to the concept that the dominant group is that which holds the most power in a given society, while subordinate groups are those who lack power compared to the dominant group.

Note that being a numerical minority is not a characteristic of being a minority group; sometimes larger groups can be considered minority groups due to their lack of power. It is the lack of power that is the predominant characteristic of a minority, or subordinate group. For example, consider apartheid in South Africa, in which a numerical majority (the Black inhabitants of the country) were exploited and oppressed by the White minority.

According to Charles Wagley and Marvin Harris (1958), a minority group is distinguished by five characteristics: (1) unequal treatment and less power over their lives, (2) distinguishing physical or cultural traits like skin color or language, (3) involuntary membership in the group, (4) awareness of subordination, and (5) high rate of in-group marriage. Additional examples of minority groups might include the LGBTQ community, religious practitioners whose faith is not widely practiced where they live, and people with disabilities.

Scapegoat theory, developed initially from Dollard's (1939) Frustration-Aggression theory, suggests that the dominant group will displace its unfocused aggression onto a subordinate group. History has shown us many examples of the scapegoating of a subordinate group. An example from the last century is the way Adolf Hitler blamed the Jewish population for Germany's social and economic problems. In the United States, recent immigrants have frequently been the scapegoat for the nation's—or an individual's—woes. Many states have enacted laws to disenfranchise immigrants; these laws are popular because they let the dominant group scapegoat a subordinate group.

Multiple Identities

Figure \(\PageIndex{1}\): Golfer Tiger Woods has Chinese, Thai, African American, Native American, and Dutch heritage. Individuals with multiple ethnic backgrounds are becoming more common. (Credit: familymwr/flickr)

Prior to the twentieth century, racial intermarriage (referred to as miscegenation) was extremely rare, and in many places, illegal. While the sexual subordination of enslaved people did result in children of mixed race, these children were usually considered Black, and therefore, property. There was no concept of multiple racial identities with the possible exception of the Creole. Creole society developed in the port city of New Orleans, where a mixed-race culture grew from French and African inhabitants. Unlike in other parts of the country, “Creoles of color” had greater social, economic, and educational opportunities than most African Americans.

Increasingly during the modern era, the removal of miscegenation laws and a trend toward equal rights and legal protection against racism have steadily reduced the social stigma attached to racial exogamy (exogamy refers to marriage outside a person's core social unit). It is now common for the children of racially mixed parents to acknowledge and celebrate their various ethnic identities. Golfer Tiger Woods, for instance, has Chinese, Thai, African American, Native American, and Dutch heritage; he jokingly refers to his ethnicity as "Cablinasian," a term he coined to combine several of his ethnic backgrounds. While this is the trend, it is not yet evident in all aspects of our society. For example, the U.S. Census only recently added additional categories for people to identify themselves, such as non-White Hispanic. A growing number of people chose multiple races to describe themselves on the 2020 Census, indicating that individuals have multiple identities.

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4.3: Theoretical Perspectives on Race and Ethnicity

Learning Objectives

By the end of this section, you should be able to:

1. Describe how major sociological perspectives view race and ethnicity
2. Identify examples of culture of prejudice

Theoretical Perspectives on Race and Ethnicity

We can examine race and ethnicity through three major sociological perspectives: functionalism, conflict theory, and symbolic interactionism. As you read through these theories, ask yourself which one makes the most sense and why.

Functionalism

Functionalism emphasizes that all the elements of society have functions that promote solidarity and maintain order and stability in society. Hence, we can observe people from various racial and ethnic backgrounds interacting harmoniously in a state of social balance. Problems arise when one or more racial or ethnic groups experience inequalities and discriminations. This creates tension and conflict resulting in temporary dysfunction of the social system. For example, the killing of a Black man George Floyd by a White police officer in 2020 stirred up protests demanding racial justice and changes in policing in the United States. To restore the society's pre-disturbed state or to seek a new equilibrium, the police department and various parts of the system require changes and compensatory adjustments.

Another way to apply the functionalist perspective to race and ethnicity is to discuss the way racism can contribute positively to the functioning of society by strengthening bonds between in-group members through the ostracism of out-group members. Consider how a community might increase solidarity by refusing to allow outsiders access. On the other hand, Rose (1951) suggested that dysfunctions associated with racism include the failure to take advantage of talent in the subjugated group, and that society must divert from other purposes the time and effort needed to maintain artificially constructed racial boundaries. Consider how much money, time, and effort went toward maintaining separate and unequal educational systems prior to the civil rights movement.

In the view of functionalism, racial and ethnic inequalities must have served an important function in order to exist as long as they have. This concept, sometimes, can be problematic. How can racism and discrimination contribute positively to society? Nash (1964) focused his argument on the way racism is functional for the dominant group, for example, suggesting that racism morally justifies a racially unequal society. Consider the way slave owners justified slavery in the antebellum South, by suggesting Black people were fundamentally inferior to White and preferred slavery to freedom.

Interactionism

For symbolic interactionists, race and ethnicity provide strong symbols as sources of identity. In fact, some interactionists propose that the symbols of race, not race itself, are what lead to racism. Famed Interactionist Herbert Blumer (1958) suggested that racial prejudice is formed through interactions between members of the dominant group: Without these interactions, individuals in the dominant group would not hold racist views. These interactions contribute to an abstract picture of the subordinate group that allows the dominant group to support its view of the subordinate group, and thus maintains the status quo. An example of this might be an individual whose beliefs about a particular group are based on images conveyed in popular media, and those are unquestionably believed because the individual has never personally met a member of that group.

Another way to apply the interactionist perspective is to look at how people define their races and the race of others. Some people who claim a White identity have a greater amount of skin pigmentation than some people who claim a Black identity; how did they come to define themselves as Black or White?

Conflict Theory

Conflict theories are often applied to inequalities of gender, social class, education, race, and ethnicity. A conflict theory perspective of U.S. history would examine the numerous past and current struggles between the White ruling class and racial and ethnic minorities, noting specific conflicts that have arisen when the dominant group perceived a threat from the minority group. In the late nineteenth century, the rising power of Black Americans after the Civil War resulted in draconian Jim Crow laws that severely limited Black political and social power. For example, Vivien Thomas (1910–1985), the Black surgical technician who helped develop the groundbreaking surgical technique that saves the lives of "blue babies" was classified as a janitor for many years, and paid as such, despite the fact that he was conducting complicated surgical experiments. The years since the Civil War have showed a pattern of attempted disenfranchisement, with gerrymandering and voter suppression efforts aimed at predominantly minority neighborhoods.

Intersection Theory

Feminist sociologist Patricia Hill Collins (1990) further developed **intersection theory**, originally articulated in 1989 by Kimberlé Crenshaw, which suggests we cannot separate the effects of race, class, gender, sexual orientation, and other attributes (Figure 11.4). When we examine race and how it can bring us both advantages and disadvantages, it is important to acknowledge that the way we experience race is shaped, for example, by our gender and class. Multiple layers of disadvantage intersect to create the way we experience race. For example, if we want to understand prejudice, we must understand that the prejudice focused on a White woman because of her gender is very different from the layered prejudice focused on an Asian woman in poverty, who is affected by stereotypes related to being poor, being a woman, and her ethnic status.

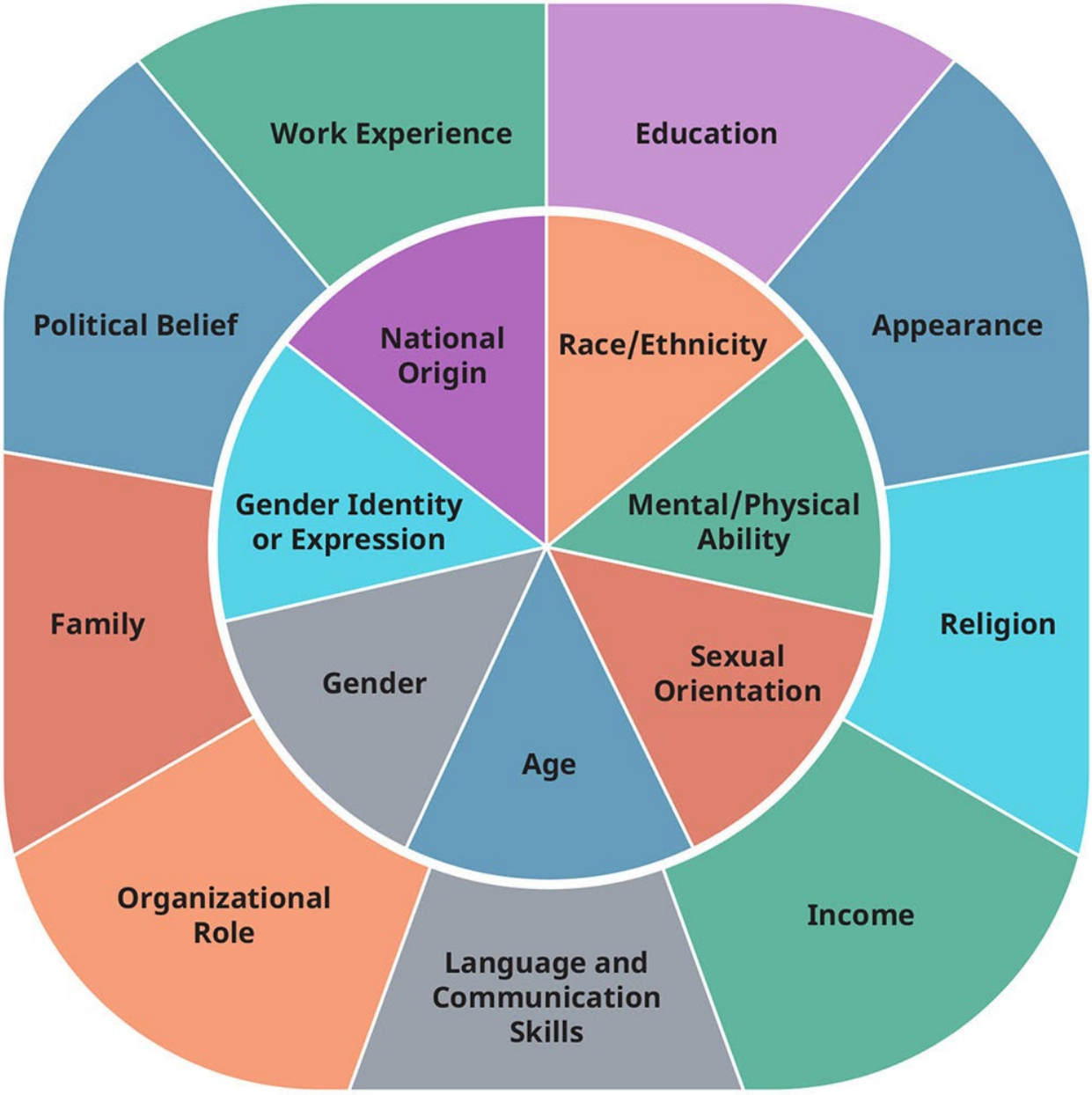

Figure \PageIndex{1}: Our identities are formed by dozens of factors, sometimes represented in intersection wheels. Consider the subset of identity elements represented here. Generally, the outer ring contains elements that may change relatively often, while the elements in the inner circle are often considered more permanent. (There are certainly exceptions.) How does each contribute to who you are, and how would possible change alter your self-defined identity?

Culture of Prejudice

Culture of prejudice refers to the theory that prejudice is embedded in our culture. We grow up surrounded by images of stereotypes and casual expressions of racism and prejudice. Consider the casually racist imagery on grocery store shelves or the stereotypes that fill popular movies and advertisements. It is easy to see how someone living in the Northeastern United States, who

may know no Mexican Americans personally, might gain a stereotyped impression from such sources as Speedy Gonzalez or Taco Bell's talking Chihuahua. Because we are all exposed to these images and thoughts, it is impossible to know to what extent they have influenced our thought processes.

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4.4: Prejudice, Discrimination, and Racism

Learning Objectives

By the end of this section, you should be able to:

1. Explain the difference between stereotypes, prejudice, discrimination, and racism
2. Identify different types of discrimination
3. View racial tension through a sociological lens

It is important to learn about stereotypes before discussing the terms prejudice, discrimination, and racism that are often used interchangeably in everyday conversation. **Stereotypes** are oversimplified generalizations about groups of people. Stereotypes can be based on race, ethnicity, age, gender, sexual orientation—almost any characteristic. They may be positive (usually about one's own group) but are often negative (usually toward other groups, such as when members of a dominant racial group suggest that a subordinate racial group is stupid or lazy). In either case, the stereotype is a generalization that doesn't take individual differences into account.

Where do stereotypes come from? In fact, new stereotypes are rarely created; rather, they are recycled from subordinate groups that have assimilated into society and are reused to describe newly subordinate groups. For example, many stereotypes that are currently used to characterize new immigrants were used earlier in American history to characterize Irish and Eastern European immigrants.

Prejudice

Prejudice refers to the beliefs, thoughts, feelings, and attitudes someone holds about a group. A prejudice is not based on personal experience; instead, it is a prejudgment, originating outside actual experience. Recall from the chapter on Crime and Deviance that the criminalization of marijuana was based on anti-immigrant sentiment; proponents used fictional, fear-instilling stories of "reefer madness" and rampant immoral and illegal activities among Spanish-speaking people to justify new laws and harsh treatment of marijuana users. Many people who supported criminalizing marijuana had never met any of the new immigrants who were rumored to use it; the ideas were based in prejudice.

While prejudice is based on beliefs outside of experience, experience can lead people to feel that their prejudice is confirmed or justified. This is a type of confirmation bias. For example, if someone is taught to believe that a certain ethnic group has negative attributes, every negative act committed someone in that group can be seen as confirming the prejudice. Even a minor social offense committed by a member of the ethnic group, like crossing the street outside the crosswalk or talking too loudly on a bus, could confirm the prejudice.

While prejudice often originates outside experience, it isn't instinctive. Prejudice—as well as the stereotypes that lead to it and the discrimination that stems from it—is most often taught and learned. The teaching arrives in many forms, from direct instruction or indoctrination, to

observation and socialization. Movies, books, charismatic speakers, and even a desire to impress others can all support the development of prejudices.

Figure \(\PageIndex{1}\): Stereotypes and prejudices are persistent and apply to almost every category of people. They are also subject to confirmation bias, in which any bit of supporting evidence gives a person more confidence in their belief. For example, if you think older people are bad drivers, every time you see an accident involving an older driver, it's likely to increase your confidence in your stereotype. Even if you hear the statistics that younger drivers cause more accidents than older drivers, the fulfillment of your stereotype is difficult to overcome. (Credit: Chris Freser/flickr)

Discrimination

While prejudice refers to biased thinking, **discrimination** consists of actions against a group of people. Discrimination can be based on race, ethnicity, age, religion, health, and other categories. For example, discrimination based on race or ethnicity can take many forms, from unfair housing practices such as redlining to biased hiring systems. Overt discrimination has long been part of U.S. history. In the late nineteenth century, it was not uncommon for business owners to hang signs that read, "Help Wanted: No Irish Need Apply." And southern Jim Crow laws, with their "Whites Only" signs, exemplified overt discrimination that is not tolerated today.

Discrimination also manifests in different ways. The scenarios above are examples of individual discrimination, but other types exist. Institutional discrimination occurs when a societal system has developed with embedded disenfranchisement of a group, such as the U.S. military's

historical nonacceptance of minority sexualities (the "don't ask, don't tell" policy reflected this norm).

While the form and severity of discrimination vary significantly, they are considered forms of oppression. Institutional discrimination can also include the promotion of a group's status, such in the case of privilege, which is the benefits people receive simply by being part of the dominant group.

Most people have some level of privilege, whether it has to do with health, ability, race, or gender. When discussing race, the focus is often on **White privilege**, which are the benefits people receive by being a White person or being perceived to be a White person. Most White people are willing to admit that non-White people live with a set of disadvantages due to the color of their skin. But until they gain a good degree of self-awareness, few people are willing to acknowledge the benefits they themselves receive by being a part of the dominant group. Why not? Some may feel it lessens their accomplishments, others may feel a degree of guilt, and still others may feel that admitting to privilege makes them seem like a bad or mean person. But White (or other dominant) privilege is an institutional condition, not a personal one. It exists whether the person asks for it or not. In fact, a pioneering thinker on the topic, Peggy McIntosh, noted that she didn't recognize privilege because, in fact, it was not based in meanness. Instead, it was an "invisible weightless knapsack full of special provisions" that she didn't ask for, yet from which she still benefitted (McIntosh 1989). As the reference indicates, McIntosh's first major publication about White privilege was released in 1989; many people have only become familiar with the term in recent years.

Prejudice and discrimination can overlap and intersect in many ways. To illustrate, here are four examples of how prejudice and discrimination can occur. Unprejudiced nondiscriminators are open-minded, tolerant, and accepting individuals. Unprejudiced discriminators might be those who unthinkingly practice sexism in their workplace by not considering women or gender-nonconforming people for certain positions that have traditionally been held by men. Prejudiced nondiscriminators are those who hold racist beliefs but don't act on them, such as a racist store owner who serves minority customers. Prejudiced discriminators include those who actively make disparaging remarks about others or who perpetuate hate crimes.

Racism

Racism is a stronger type of prejudice and discrimination used to justify inequalities against individuals by maintaining that one racial category is somehow superior or inferior to others; it is a set of practices used by a racial dominant group to maximize advantages for itself by disadvantaging racial minority groups. Such practices have affected wealth gap, employment, housing discrimination, government surveillance, incarceration, drug arrests, immigration arrests, infant mortality, and much more (Race Forward 2021).

Broadly, individuals belonging to minority groups experience both individual racism and systemic racism during their lifetime. While reading the following some of the common forms of racism, ask yourself, “Am I a part of this racism?” “How can I contribute to stop racism?”

- **Individual or Interpersonal Racism** refers to prejudice and discrimination executed by individuals consciously and unconsciously that occurs between individuals. Examples include telling a racist joke and believing in the superiority of White people.
- **Systemic Racism**, also called **structural racism or institutional racism**, is systems and structures that have procedures or processes that disadvantages racial minority groups. Systemic racism occurs in organizations as discriminatory treatments and unfair policies based on race that result in inequitable outcomes for White people over people of color. For example, a school system where students of color are distributed into underfunded schools and out of the higher-resourced schools.
- **Racial Profiling** is a type of systemic racism that involves the singling out of racial minorities for differential treatment, usually harsher treatment. The disparate treatment of racial minorities by law enforcement officials is a common example of racial profiling in the United States. For example, a study on the Driver's License Privilege to All Minnesota Residents from 2008 to 2010 found that the percentage of Latinos arrested was disproportionally high (Feist 2013). Similarly, the disproportionate number of Black men arrested, charged, and convicted of crimes reflect racial profiling.
- **Historical Racism** is economic inequality or social disparity caused by past racism. For example, African-Americans have had their opportunities in wealth, education and employment adversely affected due to the mistreatment of their ancestors during the slavery and post-slavery period (Wilson 2012).
- **Cultural Racism** occurs when the assumption of inferiority of one or more races is built into the culture of a society. For example, the European culture is considered supposedly more mature, evolved and rational than other cultures (Blaut 1992). A study showed that White and Asian American students with high GPAs experience greater social acceptance while Black and Native American students with high GPAs are rejected by their peers (Fuller-Rowell and Doan 2010).
- **Colorism** is a form of racism, in which someone believes one type of skin tone is superior or inferior to another within a racial group. For example, if an employer believes a Black employee with a darker skin tone is less capable than a Black employee with lighter skin tone, that is colorism. Studies suggest that darker-skinned African Americans experience more discrimination than lighter-skinned African Americans (Herring, Keith, and Horton 2004; Klonoff and Landrine 2000).
- **Color-Avoidance Racism** (sometimes referred to as "colorblind racism") is an avoidance of racial language by European-Americans that the racism is no longer an issue. The U.S. cultural narrative that typically focuses on individual racism fails to recognize systemic racism. It has arisen since the post-Civil Rights era and supports racism while avoiding any reference to race (Bonilla-Silva (2015).

How to Be an Antiracist

Almost all mainstream voices in the United States oppose racism. Despite this, racism is prevalent in several forms. For example, when a newspaper uses people's race to identify individuals accused of a crime, it may enhance stereotypes of a certain minority. Another example of racist practices is **racial steering**, in which real estate agents direct prospective homeowners toward or away from certain neighborhoods based on their race.

Racist attitudes and beliefs are often more insidious and harder to pin down than specific racist practices. They become more complex due to implicit bias (also referred to as unconscious bias)

which is the process of associating stereotypes or attitudes towards categories of people without conscious awareness – which can result in unfair actions and decisions that are at odds with one's conscious beliefs about fairness and equality (Osta and Vasquez 2021). For example, in schools we often see "honors" and "gifted" classes quickly filled with White students while the majority of Black and Latino students are placed in the lower track classes. As a result, our mind consciously and unconsciously starts to associate Black and Latino students with being less intelligent, less capable. Osta and Vasquez (2021) argue that placing the student of color into a lower and less rigorous track, we reproduce the inequity, and the vicious cycle of structural racism and implicit bias continues.

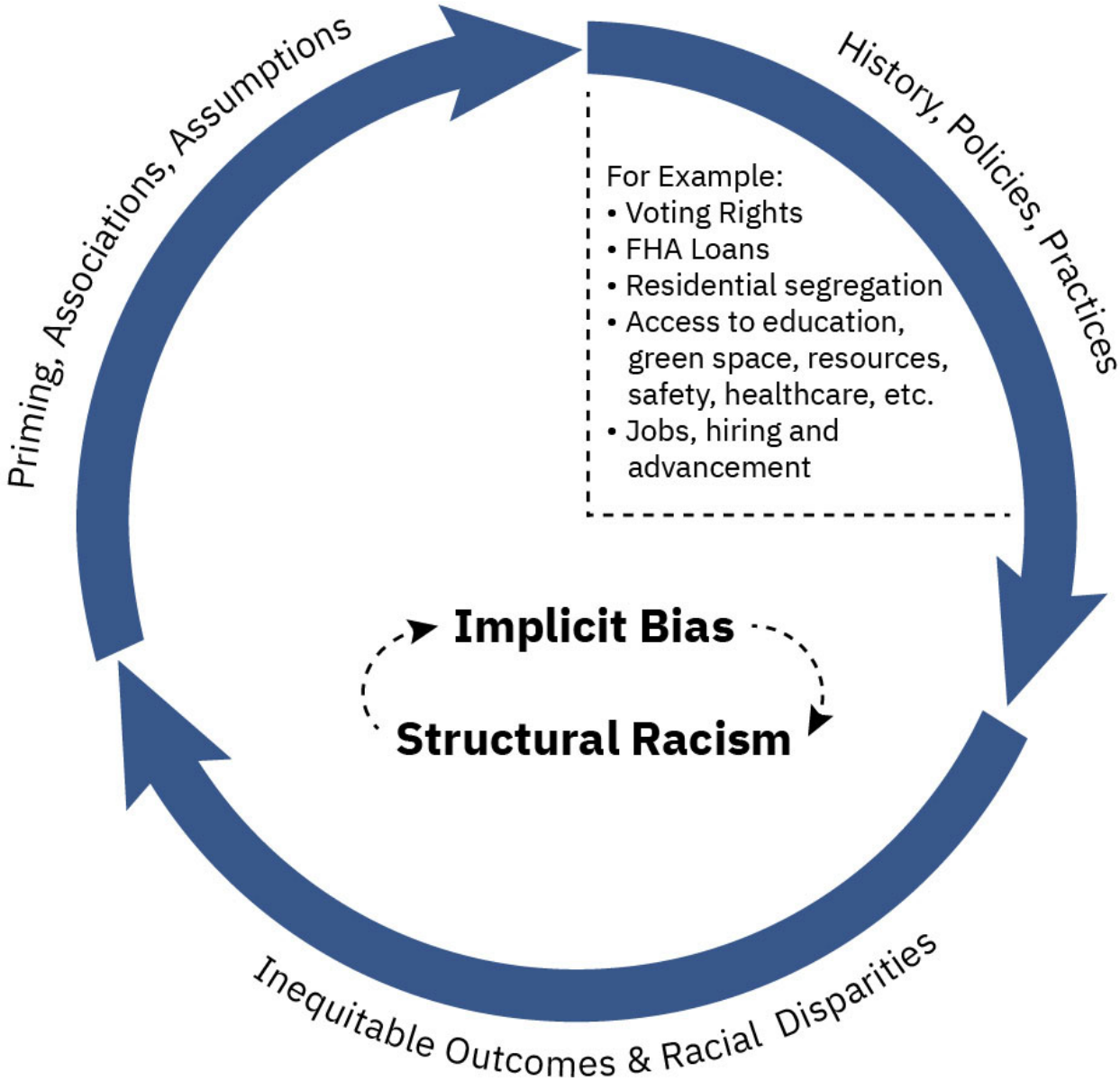

Figure \(\PageIndex{2}\): Implicit Bias and Structural Racialization (Osta and Vasquez 2021)

If everyone becomes antiracist, breaking the vicious cycle of structural racism and implicit bias may not be far away. To be antiracist is a radical choice in the face of history, requiring a radical

reorientation of our consciousness (Kendi 2019). Proponents of anti-racism indicate that we must work collaboratively within ourselves, our institutions, and our networks to challenge racism at local, national and global levels. The practice of anti-racism is everyone's ongoing work that everyone should pursue at least the following (Carter and Snyder 2020):

- Understand and own the racist ideas in which we have been socialized and the racist biases that these ideas have created within each of us.
- Identify racist policies, practices, and procedures and replace them with antiracist policies, practices, and procedures.

Anti-racism need not be confrontational in the sense of engaging in direct arguments with people, feeling terrible about your privilege, or denying your own needs or success. In fact, many people who are a part of a minority acknowledge the need for allies from the dominant group (Melaku 2020). Understanding and owning the racist ideas, and recognizing your own privilege, is a good and brave thing.

We cannot erase racism simply by enacting laws to abolish it, because it is embedded in our complex reality that relates to educational, economic, criminal, political, and other social systems. Importantly, everyone can become antiracist by making conscious choices daily. Being racist or antiracist is not about who you are; it is about what you do (Carter and Snyder 2020).

What does it mean to you to be an "anti-racist"? How do see the recent events or protests in your community, country, or somewhere else? Are they making any desired changes?

BIG PICTURE

Racial Tensions in the United States

The death of Michael Brown in Ferguson, Missouri on August 9, 2014 illustrates racial tensions in the United States as well as the overlap between prejudice, discrimination, and institutional racism. On that day, Brown, a young unarmed Black man, was killed by a White police officer named Darren Wilson. During the incident, Wilson directed Brown and his friend to walk on the sidewalk instead of in the street. While eyewitness accounts vary, they agree that an altercation occurred between Wilson and Brown. Wilson's version has him shooting Brown in self-defense after Brown assaulted him, while Dorian Johnson, a friend of Brown also present at the time, claimed that Brown first ran away, then turned with his hands in the air to surrender, after which Wilson shot him repeatedly (Nobles and Bosman 2014). Three autopsies independently confirmed that Brown was shot six times (Lowery and Fears 2014).

The shooting focused attention on a number of race-related tensions in the United States. First, members of the predominantly Black community viewed Brown's death as the result of a White police officer racially profiling a Black man (Nobles and Bosman 2014). In the days after, it was revealed that only three members of the town's fifty-three-member police force were Black (Nobles and Bosman 2014). The national dialogue shifted during the next few weeks, with some commentators pointing to a nationwide **sedimentation of racial inequality** and identifying redlining in Ferguson as a cause of the unbalanced racial composition in the community, in local

political establishments, and in the police force (Bouie 2014). **Redlining** is the practice of routinely refusing mortgages for households and businesses located in predominately minority communities, while sedimentation of racial inequality describes the intergenerational impact of both practical and legalized racism that limits the abilities of Black people to accumulate wealth.

Ferguson's racial imbalance may explain in part why, even though in 2010 only about 63 percent of its population was Black, in 2013 Black people were detained in 86 percent of stops, 92 percent of searches, and 93 percent of arrests (Missouri Attorney General's Office 2014). In addition, **de facto segregation** in Ferguson's schools, a race-based wealth gap, urban sprawl, and a Black unemployment rate three times that of the White unemployment rate worsened existing racial tensions in Ferguson while also reflecting nationwide racial inequalities (Bouie 2014).

This situation has not much changed in the United States. After Michael Brown, dozens of unarmed Black people have been shot and killed by police. Studies find no change to the racial disparity in the use of deadly force by police (Belli 2020). Do you think that racial tension can be reduced by stopping police action against racial minorities? What types of policies and practices are important to reduce racial tension? Who are responsible? Why?

4.4: Prejudice, Discrimination, and Racism is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

4.5: Intergroup Relationships

Learning Objectives

By the end of this section, you should be able to:

1. Explain different intergroup relations in terms of their relative levels of tolerance
2. Give historical and/or contemporary examples of each type of intergroup relation

Intergroup relations (relationships between different groups of people) range along a spectrum between tolerance and intolerance. The most tolerant form of intergroup relations is pluralism, in which no distinction is made between minority and majority groups, but instead, there's equal standing. At the other end of the continuum are amalgamation, expulsion, and even genocide—stark examples of intolerant intergroup relations.

Pluralism

Pluralism is represented by the ideal of the United States as a "salad bowl": a great mixture of different cultures where each culture retains its own identity and yet adds to the flavor of the whole. True pluralism is characterized by mutual respect on the part of all cultures, both dominant and subordinate, creating a multicultural environment of acceptance. In reality, true pluralism is a difficult goal to reach. In the United States, the mutual respect required by pluralism is often missing, and the nation's past model of a melting pot posits a society where cultural differences aren't embraced as much as erased.

Assimilation

Assimilation describes the process by which a minority individual or group gives up its own identity by taking on the characteristics of the dominant culture. In the United States, which has a history of welcoming and absorbing immigrants from different lands, assimilation has been a function of immigration.

Figure 4.5.1: For many immigrants to the United States, the Statue of Liberty is a symbol of freedom and a new life. Unfortunately, they often encounter prejudice and discrimination. (Credit: Mark Heard/flickr)

Most people in the United States have immigrant ancestors. In relatively recent history, between 1890 and 1920, the United States became home to around 24 million immigrants. In the decades since then, further waves of immigrants have come to these shores and have eventually been absorbed into U.S. culture, sometimes after facing extended periods of prejudice and discrimination. Assimilation may lead to the loss of the minority group's cultural identity as they become absorbed into the dominant culture, but assimilation has minimal to no impact on the majority group's cultural identity.

Some groups may keep only symbolic gestures of their original ethnicity. For instance, many Irish Americans may celebrate Saint Patrick's Day, many Hindu Americans enjoy a Diwali festival, and many Mexican Americans may celebrate *Cinco de Mayo* (a May 5 acknowledgment of the Mexican victory over the French Empire at the Battle of Puebla). However, for the rest of the year, other aspects of their originating culture may be forgotten.

Assimilation is antithetical to the "salad bowl" created by pluralism; rather than maintaining their own cultural flavor, subordinate cultures give up their own traditions in order to conform to their new environment. Sociologists measure the degree to which immigrants have assimilated to a new culture with four benchmarks: socioeconomic status, spatial concentration, language assimilation, and intermarriage. When faced with racial and ethnic discrimination, it can be difficult for new immigrants to fully assimilate. Language assimilation, in particular, can be a formidable barrier, limiting employment and educational options and therefore constraining growth in socioeconomic status.

Amalgamation

Amalgamation is the process by which a minority group and a majority group combine to form a new group. Amalgamation creates the classic “melting pot” analogy; unlike the “salad bowl,” in which each culture retains its individuality, the “melting pot” ideal sees the combination of cultures that results in a new culture entirely.

Amalgamationin the form of miscegenation is achieved through intermarriage between races. In the United States, antimiscegenation laws, which criminalized interracial marriage, flourished in the South during the Jim Crow era. It wasn’t until 1967’s *Loving v. Virginia* that the last antimiscegenation law was struck from the books, making these laws unconstitutional.

Genocide

Genocide, the deliberate annihilation of a targeted (usually subordinate) group, is the most toxic intergroup relationship. Historically, we can see that genocide has included both the intent to exterminate a group and the function of exterminating of a group, intentional or not.

Possibly the most well-known case of genocide is Hitler’s attempt to exterminate the Jewish people in the first part of the twentieth century. Also known as the Holocaust, the explicit goal of Hitler’s “Final Solution” was the eradication of European Jewish people, as well as the destruction of other minority groups such as Catholics, people with disabilities, and LGBTQ people. With forced emigration, concentration camps, and mass executions in gas chambers, Hitler’s Nazi regime was responsible for the deaths of 12 million people, 6 million of whom were Jewish. Hitler’s intent was clear, and the high Jewish death toll certainly indicates that Hitler and his regime committed genocide. But how do we understand genocide that is not so overt and deliberate?

The treatment of the Native Americans by the European colonizers is an example of genocide committed against indigenous people. Some historians estimate that Native American populations dwindled from approximately 12 million people in the year 1500 to barely 237,000 by the year 1900 (Lewy 2004). European settlers coerced American Indians off their own lands, often causing thousands of deaths in forced removals, such as occurred in the Cherokee or Potawatomi Trail of Tears. Settlers also enslaved Native Americans and forced them to give up their religious and cultural practices. But the major cause of Native American death was neither slavery nor war nor forced removal: it was the introduction of European diseases and Native American lack of immunity to them. Smallpox, diphtheria, and measles flourished among indigenous American tribes who had no exposure to the diseases and no ability to fight them. Quite simply, these diseases decimated the tribes. The use of diseases as weapon was most likely unintentional in some cases and intentional in others. For example, during the Seven Years War, the British gave smallpox-infected blankets to the Native tribes in order to "reduce them," and this and similar practices likely continued throughout the centuries-long assault on the Native American people.

Genocide is not a just a historical concept; it is practiced even in the twenty-first century. For example, ethnic and geographic conflicts in the Darfur region of Sudan have led to hundreds of

thousands of deaths. As part of an ongoing land conflict, the Sudanese government and their state-sponsored Janjaweed militia have led a campaign of killing, forced displacement, and systematic rape of Darfuri people. Although a treaty was signed in 2011, the peace is fragile.

Expulsion

Expulsion refers to a subordinate group being forced, by a dominant group, to leave a certain area or country. As seen in the examples of the Trail of Tears and the Holocaust, expulsion can be a factor in genocide. However, it can also stand on its own as a destructive group interaction. Expulsion has often occurred historically with an ethnic or racial basis. In the United States, President Franklin D. Roosevelt issued Executive Order 9066 in 1942, after the Japanese government's attack on Pearl Harbor. The Order authorized the establishment of internment camps for anyone with as little as one-eighth Japanese ancestry (i.e., one great-grandparent who was Japanese). Over 120,000 legal Japanese residents and Japanese U.S. citizens, many of them children, were held in these camps for up to four years, despite the fact that there was never any evidence of collusion or espionage. (In fact, many Japanese Americans continued to demonstrate their loyalty to the United States by serving in the U.S. military during the War.) In the 1990s, the U.S. executive branch issued a formal apology for this expulsion; reparation efforts continue today.

Segregation

Segregation refers to the physical separation of two groups, particularly in residence, but also in workplace and social functions. It is important to distinguish between *de jure* segregation (segregation that is enforced by law) and *de facto* segregation (segregation that occurs without laws but because of other factors). A stark example of *de jure* segregation is the apartheid movement of South Africa, which existed from 1948 to 1994. Under apartheid, Black South Africans were stripped of their civil rights and forcibly relocated to areas that segregated them physically from their White compatriots. Only after decades of degradation, violent uprisings, and international advocacy was apartheid finally abolished.

De jure segregation occurred in the United States for many years after the Civil War. During this time, many former Confederate states passed Jim Crow laws that required segregated facilities for Black and White people. These laws were codified in 1896's landmark Supreme Court case *Plessy v. Ferguson*, which stated that "separate but equal" facilities were constitutional. For the next five decades, Black people were subjected to legalized discrimination, forced to live, work, and go to school in separate—but *unequal*—facilities. It wasn't until 1954 and the *Brown v. Board of Education* case that the Supreme Court declared that "separate educational facilities are inherently unequal," thus ending *de jure* segregation in the United States.

Figure 4.5.2: In the "Jim Crow" South, it was legal to have "separate but equal" facilities for Black people and White people. (Credit: Library of Congress/Wikimedia Commons)

De facto segregation, however, cannot be abolished by any court mandate. Few institutions desegregated as a result of *Brown*; in fact, government and even military intervention was necessary to enforce the ruling, and it took the Civil Rights Act and other laws to formalize the equality. Segregation is still alive and well in the United States, with different racial or ethnic groups often segregated by neighborhood, borough, or parish. Sociologists use segregation indices to measure racial segregation of different races in different areas. The indices employ a scale from zero to 100, where zero is the most integrated and 100 is the least. In the New York metropolitan area, for instance, the Black-White segregation index was seventy-nine for the years 2005–2009. This means that 79 percent of either Black or White people would have to move in order for each neighborhood to have the same racial balance as the whole metro region (Population Studies Center 2010).

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4.6: Race and Ethnicity in the United States

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Using chapter from Open Stax Intro to Sociology 3e

11.5 Race and Ethnicity in the United States

Learning Objectives

By the end of this section, you should be able to:

- Compare and contrast the different experiences of various ethnic groups in the United States
- Apply theories of intergroup relations, race, and ethnicity to different subordinate groups

When colonists came to the New World, they found a land that did not need “discovering” since it was already inhabited. While the first wave of immigrants came from Western Europe, eventually the bulk of people entering North America were from Northern Europe, then Eastern Europe, then Latin America and Asia. And let us not forget the forced immigration of enslaved Africans. Most of these groups underwent a period of disenfranchisement in which they were relegated to the bottom of the social hierarchy before they managed (for those who could) to achieve social mobility. Because of this achievement, the U.S. is still a “dream destination” for millions of people living in other countries. Many thousands of people, including children, arrive here every year both documented and undocumented. Most Americans welcome and support new immigrants wholeheartedly. For example, the Development, Relief, and Education for Alien Minors (DREAM) Act introduced in 2001 provides a means for undocumented immigrants who arrived in the U.S. as children to gain a pathway to permanent legal status. Similarly, the Deferred Action for Childhood Arrivals (DACA) introduced in 2012 gives young undocumented immigrants a work permit and protection from deportation (Georgetown Law 2021). Today, the U.S. society is

multicultural, multiracial and multiethnic that is composed of people from several national origins.

The U.S. Census Bureau collects racial data in accordance with guidelines provided by the U.S. Office of Management and Budget (OMB 2016). These data are based on self-identification; generally reflect a social definition of race recognized in this country that include racial and national origin or sociocultural groups. People may choose to report more than one race to indicate their racial mixture, such as “American Indian” and “White.” People who identify their origin as Hispanic, Latino, or Spanish may be of any race. OMB requires five minimum categories: White, Black or African American, American Indian or Alaska Native, Asian, and Native Hawaiian or Other Pacific Islander. The U.S. Census Bureau’s QuickFacts as of July 1, 2019 showed that over 328 million people representing various racial groups were living in the U.S. (Table 11.1).

Population estimates, July 1, 2019, (V2019)	328,239,523
Race and Hispanic Origin	**Percentage (%)**
White alone	76.3
Black or African American alone	13.4
American Indian and Alaska Native alone	1.3
Asian alone	5.9
Native Hawaiian and Other Pacific Islander alone	0.2
Two or More Races	2.8
Hispanic or Latino	18.5

White alone, not Hispanic or Latino	60.1

Table 11.1 Percentage of Race and Hispanic Origin Population 2019 (Table courtesy of U.S. Census Bureau)

To clarify the terminology in the table, note that the U.S. Census Bureau defines racial groups as follows:

- White – A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.
- Black or African American – A person having origins in any of the Black racial groups of Africa.
- American Indian or Alaska Native – A person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.
- Asian – A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- Native Hawaiian or Other Pacific Islander – A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

Information on race is required for many Federal programs and is critical in making policy decisions, particularly for civil rights including racial justice. States use these data to meet legislative redistricting principles. Race data also are used to promote equal employment opportunities and to assess racial disparities in health and environmental risks that demonstrates the extent to which this multiculturality is embraced. The many manifestations of multiculturalism carry significant political repercussions. The sections below will describe how several groups became part of U.S. society, discuss the history of intergroup relations for each faction, and assess each group’s status today.

Native Americans

Native Americans are Indigenous peoples, the only nonimmigrant people in the United States. According to the National Congress of American Indians, Native Americans are "All Native people of the United States and its trust territories (i.e., American Indians, Alaska Natives, Native Hawaiians, Chamorros, and American Samoans), as well as persons from Canadian First Nations and Indigenous communities in Mexico and Central and South America who are U.S. residents (NCAI 2020, p. 11)." Native Americans once numbered in the millions but by 2010 made up only 0.9 percent of U.S. populace; see above (U.S. Census 2010). Currently, about 2.9 million people identify themselves as Native American alone, while an additional 2.3 million identify themselves as Native American mixed with another ethnic group (Norris, Vines, and Hoeffel 2012).

SOCIOLOGY IN THE REAL WORLD

Sports Teams with Native American Names

Figure 11.8 Many Native Americans (and others) believe sports teams with names like the Indians, Braves, and Warriors perpetuate unwelcome stereotypes. The Not Your Mascot protest was one of many directed at the then Washington Redskins, which eventually changed its name. (Credit: Fibonacci Blue/fickr)

The sports world abounds with team names like the Indians, the Warriors, the Braves, and even the Savages and Redskins. These names arise from historically prejudiced views of Native Americans as fierce, brave, and strong: attributes that would be beneficial to a sports team, but are not necessarily beneficial to people in the United States who should be seen as more than that.

Since the civil rights movement of the 1960s, the National Congress of American Indians (NCAI) has been campaigning against the use of such mascots, asserting that the "warrior savage myth . . . reinforces the racist view that Indians are uncivilized and uneducated and it has been used to justify policies of forced assimilation and destruction of Indian culture" (NCAI Resolution #TUL-05-087 2005). The campaign has met with limited success. While some teams have changed their names, hundreds of professional, college, and K–12 school teams still have names derived from this stereotype. Another group, American Indian Cultural Support (AICS), is especially concerned with the use of such names at K–12 schools, influencing children when they should be gaining a fuller and more realistic understanding of Native Americans than such stereotypes supply.

After years of pressure and with a wider sense of social justice and cultural sensitivity, the Washington Football Team removed their offensive name before the 2020 season, and the Cleveland Major League Baseball team announced it would change its name after the 2021 season.

What do you think about such names? Should they be allowed or banned? What argument would a symbolic interactionist make on this topic?

History of Intergroup Relations

Native American culture prior to European settlement is referred to as Pre-Columbian: that is, prior to the coming of Christopher Columbus in 1492. Mistakenly believing that he had landed in the East Indies, Columbus named the indigenous people "Indians," a name that has persisted for centuries despite being a geographical misnomer and one used to blanket hundreds of sovereign tribal nations (NCAI 2020).

The history of intergroup relations between European colonists and Native Americans is a brutal one. As discussed in the section on genocide, the effect of European settlement of the Americans was to nearly destroy the indigenous population. And although Native Americans' lack of immunity to European diseases caused the most deaths, overt mistreatment and massacres of Native Americans by Europeans were devastating as well.

From the first Spanish colonists to the French, English, and Dutch who followed, European settlers took what land they wanted and expanded across the continent at will. If indigenous people tried to retain their stewardship of the land, Europeans fought them off with superior weapons. Europeans' domination of the Americas was indeed a conquest; one scholar points out that Native Americans are the only minority group in the United States whose subordination occurred purely through conquest by the dominant group (Marger 1993).

After the establishment of the United States government, discrimination against Native Americans was codified and formalized in a series of laws intended to subjugate them and keep them from gaining any power. Some of the most impactful laws are as follows:

- The Indian Removal Act of 1830 forced the relocation of any Native tribes east of the Mississippi River to lands west of the river.
- The Indian Appropriation Acts funded further removals and declared that no Indian tribe could be recognized as an independent nation, tribe, or power with which the U.S. government would have to make treaties. This made it even easier for the U.S. government to take land it wanted.
- The Dawes Act of 1887 reversed the policy of isolating Native Americans on reservations, instead forcing them onto individual properties that were intermingled with White settlers, thereby reducing their capacity for power as a group.

Native American culture was further eroded by the establishment of boarding schools in the late nineteenth century. These schools, run by both Christian missionaries and the United States government, had the express purpose of "civilizing" Native American children and assimilating them into White society. The boarding schools were located off-reservation to ensure that children were separated from their families and culture. Schools forced children to cut their hair, speak English, and practice Christianity. Physical and sexual abuses were rampant for decades; only in 1987 did the Bureau of Indian Affairs issue a policy on sexual abuse in boarding schools. Some scholars argue that many of the problems that Native Americans face today result from almost a century of mistreatment at these boarding schools.

Current Status

The eradication of Native American culture continued until the 1960s, when Native Americans were able to participate in and benefit from the civil rights movement. The Indian Civil Rights Act of 1968 guaranteed Indian tribes most of the rights of the United States Bill of Rights. New laws like the Indian Self-Determination Act of 1975 and the Education Assistance Act of the same year recognized tribal governments and gave them more power. Indian boarding schools have dwindled to only a few, and Native American cultural groups are striving to preserve and maintain old traditions to keep them from being lost forever. Today, Native Americans are citizens of three sovereigns: their tribal nations, the United States, and the state in which they reside (NCAI 2020).

However, Native Americans (some of whom wish to be called American Indians so as to avoid the "savage" connotations of the term "native") still suffer the effects of centuries of degradation. Long-term poverty, inadequate education, cultural dislocation, and high rates of unemployment contribute to Native American populations falling to the bottom of the economic spectrum. Native Americans also suffer disproportionately with lower life expectancies than most groups in the United States.

African Americans

As discussed in the section on race, the term African American can be a misnomer for many individuals. Many people with dark skin may have their more recent roots in Europe or the Caribbean, seeing themselves as Dominican American or Dutch American, for example. Further, actual immigrants from Africa may feel that they have more of a claim to the term African American than those who are many generations removed from ancestors who originally came to this country.

The U.S. Census Bureau (2019) estimates that at least 13.4 percent of the United States' population is Black.

How and Why They Came

African Americans are the exemplar minority group in the United States whose ancestors did not come here by choice. A Dutch sea captain brought the first Africans to the Virginia colony of Jamestown in 1619 and sold them as indentured servants. (Indentured servants are people who are committed to work for a certain period of time, typically without formal pay). This was not an uncommon practice for either Black or White people, and indentured servants were in high demand. For the next century, Black and White indentured servants worked side by side. But the growing agricultural economy demanded greater and cheaper labor, and by 1705, Virginia passed the slave codes declaring that any foreign-born non-Christian could be enslaved, and that enslaved people were considered property.

The next 150 years saw the rise of U.S. slavery, with Black Africans being kidnapped from their own lands and shipped to the New World on the trans-Atlantic journey known as the Middle Passage. Once in the Americas, the Black population grew until U.S.-born Black people outnumbered those born in Africa. But colonial (and later, U.S.) slave codes declared that the child of an enslaved person was also an enslaved person, so the slave class was created. By 1808, the slave trade was internal in the United States, with enslaved people being bought and sold across state lines like livestock.

History of Intergroup Relations

There is no starker illustration of the dominant-subordinate group relationship than that of slavery. In order to justify their severely discriminatory behavior, slaveholders and their supporters viewed Black people as innately inferior. Enslaved people were denied even the most basic rights of citizenship, a crucial factor for slaveholders and their supporters. Slavery poses an excellent example of conflict theory’s perspective on race relations; the dominant group needed complete control over the subordinate group in order to maintain its power. Whippings, executions, rapes, and denial of schooling and health care were widely practiced.

Slavery eventually became an issue over which the nation divided into geographically and ideologically distinct factions, leading to the Civil War. And while the abolition of slavery on moral grounds was certainly a catalyst to war, it was not the only driving force. Students of U.S.

history will know that the institution of slavery was crucial to the Southern economy, whose production of crops like rice, cotton, and tobacco relied on the virtually limitless and cheap labor that slavery provided. In contrast, the North didn't benefit economically from slavery, resulting in an economic disparity tied to racial/political issues.

A century later, the civil rights movement was characterized by boycotts, marches, sit-ins, and freedom rides: demonstrations by a subordinate group and their supporters that would no longer willingly submit to domination. The major blow to America's formally institutionalized racism was the Civil Rights Act of 1964. This Act, which is still important today, banned discrimination based on race, color, religion, sex, or national origin.

Current Status

Although government-sponsored, formalized discrimination against African Americans has been outlawed, true equality does not yet exist. The National Urban League's *2020 Equality Index* reports that Black people's overall equality level with White people has been generally improving. Measuring standards of civic engagement, economics, education, and others, Black people had an equality level of 71 percent in 2010 and had an equality level of 74 percent in 2020. The *Index*, which has been published since 2005, notes a growing trend of increased inequality with White people, especially in the areas of unemployment, insurance coverage, and incarceration. Black people also trail White people considerably in the areas of economics, health, and education (National Urban League 2020).

To what degree do racism and prejudice contribute to this continued inequality? The answer is complex. 2008 saw the election of this country's first African American president: Barack Obama. Despite being popularly identified as Black, we should note that President Obama is of a mixed background that is equally White, and although all presidents have been publicly mocked at times (Gerald Ford was depicted as a klutz, Bill Clinton as someone who could not control his libido), a startling percentage of the critiques of Obama were based on his race. In a number of other chapters, we discuss racial disparities in healthcare, education, incarceration, and other areas.

Although Black people have come a long way from slavery, the echoes of centuries of disempowerment are still evident.

SOCIOLOGY IN THE REAL WORLD

Black People Are Still Seeking Racial Justice

Figure 11.9 This gathering at the site of George Floyd's death took place five days after he was killed. The location, at Chicago Avenue and 38th Street in Minneapolis, became a memorial. (Credit: Fibbonacci Blue/flickr)

In 2020, racial justice movements expanded their protests against incidents of police brutality and all racially motivated violence against Black people. Black Lives Matter (BLM), an organization founded in 2013 in response to the acquittal of George Zimmerman, was a core part of the movement to protest the killings of George Floyd, Breonna Taylor and other Black victims of police violence. Millions of people from all racial backgrounds participated in the movement directly or indirectly, demanding justice for the victims and their families, redistributing police department funding to drive more holistic and community-driven law enforcement, addressing systemic racism, and introducing new laws to punish police officers who kill innocent people.

The racial justice movement has been able to achieve some these demands. For example, Minneapolis City Council unanimously approved $27 million settlement to the family of George Floyd in March 2021, the largest pre-trial settlement in a wrongful death case ever for the life of a Black person (Shapiro and Lloyd, 2021). $500,000 from the settlement amount is intended to enhance the business district in the area where Floyd died. Floyd, a 46-year-old Black man, was arrested and murdered in Minneapolis on May 25, 2020. Do you think such settlement is adequate to provide justice for the victims, their families and communities affected by the horrific racism? What else should be done more? How can you contribute to bring desired changes?

Asian Americans

Asian Americans represent a great diversity of cultures and backgrounds. The experience of a Japanese American whose family has been in the United States for three generations will be drastically different from a Laotian American who has only been in the United States for a few years. This section primarily discusses Chinese, Japanese, Korean, and Vietnamese immigrants and shows the differences between their experiences. The most recent estimate from the U.S. Census Bureau (2019) suggest about 5.9 percent of the population identify themselves as Asian.

How and Why They Came

The national and ethnic diversity of Asian American immigration history is reflected in the variety of their experiences in joining U.S. society. Asian immigrants have come to the United States in waves, at different times, and for different reasons.

The first Asian immigrants to come to the United States in the mid-nineteenth century were Chinese. These immigrants were primarily men whose intention was to work for several years in order to earn incomes to support their families in China. Their main destination was the American West, where the Gold Rush was drawing people with its lure of abundant money. The construction of the Transcontinental Railroad was underway at this time, and the Central Pacific section hired thousands of migrant Chinese men to complete the laying of rails across the rugged Sierra Nevada mountain range. Chinese men also engaged in other manual labor like mining and agricultural work. The work was grueling and underpaid, but like many immigrants, they persevered.

Japanese immigration began in the 1880s, on the heels of the Chinese Exclusion Act of 1882. Many Japanese immigrants came to Hawaii to participate in the sugar industry; others came to the mainland, especially to California. Unlike the Chinese, however, the Japanese had a strong government that negotiated with the U.S. government to ensure the well-being of their

immigrants. Japanese men were able to bring their wives and families to the United States, and were thus able to produce second- and third-generation Japanese Americans more quickly than their Chinese counterparts.

The most recent large-scale Asian immigration came from Korea and Vietnam and largely took place during the second half of the twentieth century. While Korean immigration has been fairly gradual, Vietnamese immigration occurred primarily post-1975, after the fall of Saigon and the establishment of restrictive communist policies in Vietnam. Whereas many Asian immigrants came to the United States to seek better economic opportunities, Vietnamese immigrants came as political refugees, seeking asylum from harsh conditions in their homeland. The Refugee Act of 1980 helped them to find a place to settle in the United States.

Figure 11.10 Thirty-five Vietnamese refugees wait to be taken aboard the amphibious USS *Blue Ridge (LCC-19)*. They are being rescued from a thirty-five-foot fishing boat 350 miles northeast of Cam Ranh Bay, Vietnam, after spending eight days at sea. (Credit: U.S. Navy/Wikimedia Commons)

History of Intergroup Relations

Chinese immigration came to an abrupt end with the Chinese Exclusion Act of 1882. This act was a result of anti-Chinese sentiment burgeoned by a depressed economy and loss of jobs. White workers blamed Chinese migrants for taking jobs, and the passage of the Act meant the number of Chinese workers decreased. Chinese men did not have the funds to return to China or to bring their families to the United States, so they remained physically and culturally segregated in the Chinatowns of large cities. Later legislation, the Immigration Act of 1924, further curtailed Chinese immigration. The Act included the race-based National Origins Act, which was aimed at keeping U.S. ethnic stock as undiluted as possible by reducing "undesirable" immigrants. It was not until after the Immigration and Nationality Act of 1965 that Chinese immigration again increased, and many Chinese families were reunited.

Although Japanese Americans have deep, long-reaching roots in the United States, their history here has not always been smooth. The California Alien Land Law of 1913 was aimed at them and other Asian immigrants, and it prohibited immigrants from owning land. An even uglier action was the Japanese internment camps of World War II, discussed earlier as an illustration of expulsion.

Current Status

Asian Americans certainly have been subject to their share of racial prejudice, despite the seemingly positive stereotype as the model minority. The **model minority** stereotype is applied to a minority group that is seen as reaching significant educational, professional, and socioeconomic levels without challenging the existing establishment.

This stereotype is typically applied to Asian groups in the United States, and it can result in unrealistic expectations by putting a stigma on members of this group that do not meet the expectations. Stereotyping all Asians as smart and capable can also lead to a lack of much-needed government assistance and to educational and professional discrimination.

SOCIOLOGY IN THE REAL WORLD

Hate Crimes Against Asian Americans

Figure 11.11 In response to widespread attacks against Asian people, partly linked to incorrect associations regarding Asian people and the COVID-19 pandemic, groups around the country and world held Stop Asian Hate rallies like this one in Canada. (Credit: GoToVan/flickr)

Asian Americans across the United States experienced a significant increase in hate crimes, harassment and discrimination tied to the spread of the COVID-19 pandemic. Community trackers recorded more than 3,000 anti-Asian attacks nationwide during 2020 in comparison to about 100 such incidents recorded annually in the prior years (Abdollah 2021). Asian American leaders have been urging community members to report any criminal incidents, demanding local law enforcement agencies for greater enforcement of existing hate-crime laws.

Many Asian Americans feel their communities have long been ignored by mainstream politics, media and entertainment although they are considered as a “model minority.” Recently, Asian American

journalists are sharing their own stories of discrimination on social media and a growing chorus of federal lawmakers are demanding actions. Do you think you can do something to stop violence against Asian Americans? Can any of your actions not only help Asian Americans but also wider people in the United States?

White Americans

White Americans are the dominant racial group in the United States. According to the U.S. Census Bureau (2019), 76.3 percent of U.S. adults currently identify themselves as White alone. In this section, we will focus on German, Irish, Italian, and Eastern European immigrants.

Why They Came

White ethnic Europeans formed the second and third great waves of immigration, from the early nineteenth century to the mid-twentieth century. They joined a newly minted United States that was primarily made up of White Protestants from England. While most immigrants came searching for a better life, their experiences were not all the same.

The first major influx of European immigrants came from Germany and Ireland, starting in the 1820s. Germans came both for economic opportunity and to escape political unrest and military conscription, especially after the Revolutions of 1848. Many German immigrants of this period were political refugees: liberals who wanted to escape from an oppressive government. They were well-off enough to make their way inland, and they formed heavily German enclaves in the Midwest that exist to this day.

The Irish immigrants of the same time period were not always as well off financially, especially after the Irish Potato Famine of 1845. Irish immigrants settled mainly in the cities of the East Coast, where they were employed as laborers and where they faced significant discrimination.

German and Irish immigration continued into the late 19th century and earlier 20th century, at which point the numbers for Southern and Eastern European immigrants started growing as well. Italians, mainly from the Southern part of the country, began arriving in large numbers in the 1890s. Eastern European immigrants—people from Russia, Poland, Bulgaria, and Austria-Hungary—started arriving around the same time. Many of these Eastern Europeans were peasants forced into a hardscrabble existence in their native lands; political unrest, land shortages, and crop failures drove them to seek better opportunities in the United States. The Eastern European immigration wave also included Jewish people escaping pogroms (anti-Jewish massacres) of Eastern Europe and the Pale of Settlement in what was then Poland and Russia.

History of Intergroup Relations

In a broad sense, German immigrants were not victimized to the same degree as many of the other subordinate groups this section discusses. While they may not have been welcomed with open arms, they were able to settle in enclaves and establish roots. A notable exception to this was during the lead up to World War I and through World War II, when anti-German sentiment was virulent.

Irish immigrants, many of whom were very poor, were more of a working poor class than the Germans. In Ireland, the English had oppressed the Irish for centuries, eradicating their language and culture and discriminating against their religion (Catholicism). Although the Irish had a larger population than the English, they were a subordinate group. This dynamic reached into the New World, where Anglo-Americans saw Irish immigrants as a race apart: dirty, lacking ambition, and suitable for only the most menial jobs. In fact, Irish immigrants were subject to criticism identical to that with which the dominant group characterized African Americans. By necessity, Irish immigrants formed tight communities segregated from their Anglo neighbors.

The later wave of immigrants from Southern and Eastern Europe was also subject to intense discrimination and prejudice. In particular, the dominant group—which now included second- and third-generation Germans and Irish—saw Italian immigrants as the dregs of Europe and worried about the purity of the American race (Myers 2007). Italian immigrants lived in segregated slums in Northeastern cities, and in some cases were even victims of violence and lynching similar to what African Americans endured. They undertook physical labor at lower pay than other workers, often doing the dangerous work that other laborers were reluctant to take on, such as earth moving and construction.

Current Status

German Americans are the largest group among White ethnic Americans in the country. For many years, German Americans endeavored to maintain a strong cultural identity, but they are now culturally assimilated into the dominant culture.

There are now more Irish Americans in the United States than there are Irish in Ireland. One of the country's largest cultural groups, Irish Americans have slowly achieved acceptance and assimilation into the dominant group.

Myers (2007) states that Italian Americans' cultural assimilation is "almost complete, but with remnants of ethnicity." The presence of "Little Italy" neighborhoods—originally segregated slums where Italians congregated in the nineteenth century—exist today. While tourists flock to the saints' festivals in Little Italies, most Italian Americans have moved to the suburbs at the same rate as other White groups. Italian Americans also became more accepted after World War II, partly because of other, newer migrating groups and partly because of their significant contribution to the war effort, which saw over 500,000 Italian Americans join the military and fight against the Axis powers, which included Italy itself.

As you will see in the Religion chapter, Jewish people were also a core immigrant group to the United States. They often resided in tight-knit neighborhoods in a similar way to Italian people. Jewish identity is interesting and varied, in that many Jewish people consider themselves as

members of a collective ethnic group as well as a religion, and many Jewish people feel connected by their ancestry as well as their religion. In fact, much of the data around the number of Jewish Americans is presented with caveats about different definitions and identifications of what it means to be Jewish (Lipka 2013).

As we have seen, there is no minority group that fits easily in a category or that can be described simply. While sociologists believe that individual experiences can often be understood in light of their social characteristics (such as race, class, or gender), we must balance this perspective with awareness that no two individuals' experiences are alike. Making generalizations can lead to stereotypes and prejudice. The same is true for White ethnic Americans, who come from diverse backgrounds and have had a great variety of experiences.

SOCIAL POLICY AND DEBATE

Thinking about White Ethnic Americans: Arab Americans

(a) (b)

Figure 11.12 The Islamic Center of America in Dearborn, Michigan is the largest mosque, or Islamic religious place of worship, in the United States. Muslim women and girls often wear head coverings, which sometimes makes them a target of harassment. (Credit A: Ryan Ready/flickr; B: U.S. Department of Agriculture/flickr)

The first Arab immigrants came to this country in the late nineteenth and early twentieth centuries. They were predominantly Syrian, Lebanese, and Jordanian Christians, and they came to escape persecution and to make a better life. These early immigrants and

their descendants, who were more likely to think of themselves as Syrian or Lebanese than Arab, represent almost half of the Arab American population today (Myers 2007). Restrictive immigration policies from the 1920s until 1965 curtailed immigration, but Arab immigration since 1965 has been steady. Immigrants from this time period have been more likely to be Muslim and more highly educated, escaping political unrest and looking for better opportunities.

The United States was deeply affected by the terrorist attacks of September 11, 2001 and racial profiling has proceeded against Arab Americans since then. Particularly when engaged in air travel, being young and Arab-looking is enough to warrant a special search or detainment. This Islamophobia (irrational fear of or hatred against Muslims) does not show signs of abating. Arab Americans represent all religious practices, despite the stereotype that all Arabic people practice Islam. Geographically, the Arab region comprises the Middle East and parts of North Africa (MENA). People whose ancestry lies in that area or who speak primarily Arabic may consider themselves Arabs.

The U.S. Census has struggled with the issue of Arab identity. The 2020 Census, as in previous years, did not offer a (MENA) category under the question of race. The US government rejected a push by Arab American advocates and organizations to add the new category, meaning that people stemming from the Arab region will be counted as "white" (Harb 2018). Do you think an addition of MENA category is appropriate to reduce prejudice and discrimination against Arab Americans? What other categories should be added to promote racial justice in the United States?

Hispanic Americans

The U.S. Census Bureau uses two ethnicities in collecting and reporting data: “Hispanic or Latino” and “Not Hispanic or Latino." Hispanic or Latino is a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin regardless of race. Hispanic Americans have a wide range of backgrounds and nationalities.

The segment of the U.S. population that self-identifies as Hispanic in 2019 was recently estimated at 18.5 percent of the total (U.S. Census Bureau 2019). According to the 2010 U.S.

Census, about 75 percent of the respondents who identify as Hispanic report being of Mexican, Puerto Rican, or Cuban origin. Remember that the U.S. Census allows people to report as being more than one ethnicity.

Not only are there wide differences among the different origins that make up the Hispanic American population, but there are also different names for the group itself. Hence, there have been some disagreements over whether Hispanic or Latino is the correct term for a group this diverse, and whether it would be better for people to refer to themselves as being of their origin specifically, for example, Mexican American or Dominican American. This section will compare the experiences of Mexican Americans and Cuban Americans.

How and Why They Came

Mexican Americans form the largest Hispanic subgroup and also the oldest. Mexican migration to the United States started in the early 1900s in response to the need for inexepensive agricultural labor. Mexican migration was often circular; workers would stay for a few years and then go back to Mexico with more money than they could have made in their country of origin. The length of Mexico's shared border with the United States has made immigration easier than for many other immigrant groups.

Cuban Americans are the second-largest Hispanic subgroup, and their history is quite different from that of Mexican Americans. The main wave of Cuban immigration to the United States started after Fidel Castro came to power in 1959 and reached its crest with the Mariel boatlift in 1980. Castro's Cuban Revolution ushered in an era of communism that continues to this day. To avoid having their assets seized by the government, many wealthy and educated Cubans migrated north, generally to the Miami area.

History of Intergroup Relations

For several decades, Mexican workers crossed the long border into the United States, both "documented" and "undocumented" to work in the fields that provided produce for the developing United States. Western growers needed a steady supply of labor, and the 1940s and 1950s saw the official federal Bracero Program (*bracero* is Spanish for *strong-arm*) that offered protection to Mexican guest workers. Interestingly, 1954 also saw the enactment of "Operation Wetback," which deported thousands of illegal Mexican workers. From these examples, we can see the U.S. treatment of immigration from Mexico has been ambivalent at best.

Sociologist Douglas Massey (2006) suggests that although the average standard of living than in Mexico may be lower in the United States, it is not so low as to make permanent migration the goal of most Mexicans. However, the strengthening of the border that began with 1986's Immigration Reform and Control Act has made one-way migration the rule for most Mexicans. Massey argues that the rise of illegal one-way immigration of Mexicans is a direct outcome of the law that was intended to reduce it.

Cuban Americans, perhaps because of their relative wealth and education level at the time of immigration, have fared better than many immigrants. Further, because they were fleeing a

Communist country, they were given refugee status and offered protection and social services. The Cuban Migration Agreement of 1995 has curtailed legal immigration from Cuba, leading many Cubans to try to immigrate illegally by boat. According to a 2009 report from the Congressional Research Service, the U.S. government applied a "wet foot/dry foot" policy toward Cuban immigrants; Cubans who were intercepted while still at sea were returned to Cuba, while those who reached the shore were permitted to stay in the United States. This policy ended in 2017.

Current Status

Mexican Americans, especially those who are here undocumented, are at the center of a national debate about immigration. Myers (2007) observes that no other minority group (except the Chinese) has immigrated to the United States in such an environment of legal dispute. He notes that in some years, three times as many Mexican immigrants may have entered the United States undocumented as those who arrived documented. It should be noted that this is due to enormous disparity of economic opportunity on two sides of an open border, not because of any inherent inclination to break laws. In his report, "Measuring Immigrant Assimilation in the United States," Jacob Vigdor (2008) states that Mexican immigrants experience relatively low rates of economic and civic assimilation. He further suggests that "the slow rates of economic and civic assimilation set Mexicans apart from other immigrants, and may reflect the fact that the large numbers of Mexican immigrants residing in the United States undocumented have few opportunities to advance themselves along these dimensions."

By contrast, Cuban Americans are often seen as a model minority group within the larger Hispanic group. Many Cubans had higher socioeconomic status when they arrived in this country, and their anti-Communist agenda has made them welcome refugees to this country. In south Florida, especially, Cuban Americans are active in local politics and professional life. As with Asian Americans, however, being a model minority can mask the issue of powerlessness that these minority groups face in U.S. society.

SOCIAL POLICY AND DEBATE

Arizona's Senate Bill 1070

Figure 11.13 Protesters in Arizona dispute the harsh new anti-immigration law. (Credit: rprathap/flickr)

As both legal and unathorized immigrants, and with high population numbers, Mexican Americans are often the target of stereotyping, racism, and discrimination. A harsh example of this is in Arizona, where a stringent immigration law—known as SB 1070 (for Senate Bill 1070)—caused a nationwide controversy. Formally titled "Support Our Law Enforcement and Safe Neighborhoods Act, the law requires that during a lawful stop, detention, or arrest, Arizona police officers must establish the immigration status of anyone they suspect may be here illegally. The law makes it a crime for individuals to fail to have documents confirming their legal status, and it gives police officers the right to detain people they suspect may be in the country illegally.

To many, the most troublesome aspect of this law is the latitude it affords police officers in terms of whose citizenship they may question. Having “reasonable suspicion that the person is an alien who is unlawfully present in the United States” is reason enough to demand immigration papers (Senate Bill 1070 2010). Critics say this law will encourage racial profiling (the illegal practice of law enforcement using race as a basis for suspecting someone of a crime), making it hazardous to be caught “Driving While Brown,” a takeoff on the legal term Driving While Intoxicated (DWI) or the slang reference of “Driving While Black.” Driving While Brown refers to the likelihood of getting pulled over just for being nonWhite.

SB 1070 has been the subject of many lawsuits, from parties as diverse as Arizona police officers, the American Civil Liberties Union, and even the federal government, which sued on

the basis of Arizona contradicting federal immigration laws (ACLU 2011). In June 2012, the U.S. Supreme Court ruled on *Arizona vs. United States* regarding SB 1070. The Court upheld the provision requiring immigration status checks during law enforcement stops but struck down three other provisions. The Court ruled that these provisions violated the Supremacy Clause of the U.S. Constitution.

4.7: Key Terms

KEY TERMS

amalgamation
: the process by which a minority group and a majority group combine to form a new group

antiracist
: a person who opposes racism and acts for racial justice

assimilation
: the process by which a minority individual or group takes on the characteristics of the dominant culture

colorism
: the belief that one type of skin tone is superior or inferior to another within a racial group

culture of prejudice
: the theory that prejudice is embedded in our culture

discrimination
: prejudiced action against a group of people

dominant group
: a group of people who have more power in a society than any of the subordinate groups

ethnicity
: shared culture, which may include heritage, language, religion, and more

expulsion
: the act of a dominant group forcing a subordinate group to leave a certain area or even the country

genocide
: the deliberate annihilation of a targeted (usually subordinate) group

institutional racism
: racism embedded in social institutions

intersection theory
: theory that suggests we cannot separate the effects of race, class, gender, sexual orientation, and other attributes

minority group
: any group of people who are singled out from the others for differential and unequal treatment

model minority
: the stereotype applied to a minority group that is seen as reaching higher educational, professional, and socioeconomic levels without protest against the majority establishment

pluralism
: the ideal of the United States as a "salad bowl:" a mixture of different cultures where each culture retains its own identity and yet adds to the "flavor" of the whole

prejudice
: biased thought based on flawed assumptions about a group of people

racial profiling
: the use by law enforcement of race alone to determine whether to stop and detain someone

racial steering

the act of real estate agents directing prospective homeowners toward or away from certain neighborhoods based on their race

racism
: a set of attitudes, beliefs, and practices that are used to justify the belief that one racial category is somehow superior or inferior to others

redlining
: the practice of routinely refusing mortgages for households and business located in predominately minority communities

scapegoat theory
: a theory that suggests that the dominant group will displace its unfocused aggression onto a subordinate group

sedimentation of racial inequality
: the intergenerational impact of de facto and de jure racism that limits the abilities of Black people to accumulate wealth

segregation
: the physical separation of two groups, particularly in residence, but also in workplace and social functions

social construction of race
: the school of thought that race is not biologically identifiable

stereotypes
: oversimplified ideas about groups of people

subordinate group
: a group of people who have less power than the dominant group

White privilege
: the benefits people receive simply by being part of the dominant group

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4.8: Section Summary

4.2: Racial, Ethnic, and Minority Groups

Race is fundamentally a social construct. Ethnicity is a term that describes shared culture and national origin. Minority groups are defined by their lack of power.

4.3: Theoretical Perspectives on Race and Ethnicity

Functionalist views of race study the role dominant and subordinate groups play to create a stable social structure. Conflict theorists examine power disparities and struggles between various racial and ethnic groups. Interactionists see race and ethnicity as important sources of individual identity and social symbolism. The concept of culture of prejudice recognizes that all people are subject to stereotypes that are ingrained in their culture.

4.4: Prejudice, Discrimination, and Racism

Stereotypes are oversimplified ideas about groups of people. Prejudice refers to thoughts and feelings, while discrimination refers to actions. Racism is both prejudice and discrimination due to the belief that one race is inherently superior or inferior to other races. Antiracists fight against the systems of racism by employing antiracist policies and practices in institutions and communities.

4.5: Intergroup Relationships

Intergroup relations range from a tolerant approach of pluralism to intolerance as severe as genocide. In pluralism, groups retain their own identity. In assimilation, groups conform to the identity of the dominant group. In amalgamation, groups combine to form a new group identity.

4.6: Race and Ethnicity in the United States

The history of the U.S. people contains an infinite variety of experiences that sociologist understand follow patterns. From the indigenous people who first inhabited these lands to the waves of immigrants over the past 500 years, migration is an experience with many shared characteristics. Most groups have experienced various degrees of prejudice and discrimination as they have gone through the process of assimilation.

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4.9: Section Quiz

4.2: RACIAL, ETHNIC, AND MINORITY GROUPS

1. The racial term “African American” can refer to:
    a. A Black person living in the United States

b. People whose ancestors came to the United States through the slave trade
c. A White person who originated in Africa and now lives in the United States
d. Any of the above

2. What is the one defining feature of a minority group?
    a. Self-definition
    b. Numerical minority
    c. Lack of power
    d. Strong cultural identity
3. Ethnicity describes shared:
    a. Beliefs
    b. Language
    c. Religion
    d. Any of the above
4. Which of the following is an example of a numerical majority being treated as a subordinate group?
    a. Jewish people in Germany
    b. Creoles in New Orleans
    c. White people in Brazil
    d. Black people under apartheid in South Africa
5. Scapegoat theory shows that:
    a. Subordinate groups blame dominant groups for their problems
    b. Dominant groups blame subordinate groups for their problems
    c. Some people are predisposed to prejudice
    d. All of the above

4.3: THEORETICAL PERSPECTIVES ON RACE AND ETHNICITY

1. As a White person in the United States, being reasonably sure that you will be dealing with authority figures of the same race as you is a result of:
    a. Intersection theory
    b. Conflict theory
    c. White privilege
    d. Scapegoating theory
2. Speedy Gonzalez is an example of:
    a. Intersection theory
    b. Stereotyping
    c. Interactionist view
    d. Culture of prejudice

4.4: PREJUDICE, DISCRIMINATION, AND RACISM

1. Stereotypes can be based on:
    a. Race

b. Ethnicity
c. Gender
d. All of the above

2. What is discrimination?
    a. Biased thoughts against an individual or group
    b. Biased actions against an individual or group
    c. Belief that a race different from yours is inferior
    d. Another word for stereotyping
3. Which of the following is the best explanation of racism as a social fact?
    a. It needs to be eradicated by laws.
    b. It is like a magic pill.
    c. It does not need the actions of individuals to continue.
    d. None of the above

4.5: INTERGROUP RELATIONSHIPS

1. Which intergroup relation displays the least tolerance?
    a. Segregation
    b. Assimilation
    c. Genocide
    d. Expulsion
2. What doctrine justified legal segregation in the South?
    a. Jim Crow
    b. *Plessy v. Ferguson*
    c. *De jure*
    d. Separate but equal
3. What intergroup relationship is represented by the “salad bowl” metaphor?
    a. Assimilation
    b. Pluralism
    c. Amalgamation
    d. Segregation
4. Amalgamation is represented by the _____ metaphor.
    a. Melting pot
    b. Statue of Liberty
    c. Salad bowl
    d. Separate but equal

4.6: RACE AND ETHNICITY IN THE UNITED STATES

1. What makes Native Americans unique as a subordinate group in the United States?
    a. They are the only group that experienced expulsion.
    b. They are the only group that was segregated.
    c. They are the only group that was enslaved.

d. They are the only group that is indigenous to the United States.

2. Which subordinate group is often referred to as the “model minority?”
    a. African Americans
    b. Asian Americans
    c. White ethnic Americans
    d. Native Americans
3. Which federal act or program was designed to allow more Hispanic American immigration, not block it?
    a. The Bracero Program
    b. Immigration Reform and Control Act
    c. Operation Wetback
    d. SB 1070
4. Many Arab Americans face _____, especially after 9/11.
    a. Racism
    b. Segregation
    c. Islamophobia
    d. Prejudice
5. Why did most White ethnic Americans come to the United States?
    a. For a better life
    b. To escape oppression
    c. Because they were forced out of their own countries
    d. a and b only

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4.10: Short Answer

4.2: RACIAL, ETHNIC, AND MINORITY GROUPS

1. Why do you think the term “minority” has persisted when the word “subordinate” is more descriptive?
2. How do you describe your ethnicity? Do you include your family’s country of origin? Do you consider yourself multiethnic? How does your ethnicity compare to that of the people you spend most of your time with?

4.3: THEORETICAL PERSPECTIVES ON RACE AND ETHNICITY

1. How do redlining and racial steering contribute to institutionalized racism?
2. Give an example of stereotyping that you see in everyday life. Explain what would need to happen for this to be eliminated.

4.4: PREJUDICE, DISCRIMINATION, AND RACISM

1. Give three examples of White privilege. Do you know people who have experienced this? From what perspective?
2. What is the worst example of culture of prejudice you can think of? What are your reasons for thinking it is the worst?

4.5: INTERGROUP RELATIONSHIPS

1. Do you believe immigration laws should foster an approach of pluralism, assimilation, or amalgamation? Which perspective do you think is most supported by current U.S. immigration policies?
2. Which intergroup relation do you think is the most beneficial to the subordinate group? To society as a whole? Why?

4.6: RACE AND ETHNICITY IN THE UNITED STATES

1. In your opinion, which group had the easiest time coming to this country? Which group had the hardest time? Why?
2. Which group has made the most socioeconomic gains? Why do you think that group has had more success than others have?

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4.11: Further Research

4.2: Racial, Ethnic, and Minority Groups

Explore aspects of race and ethnicity at PBS's site, "What Is Race?".

4.3: Theoretical Perspectives on Race and Ethnicity

Are you aware of your own or others' privilege? Explore the concept with the White privilege checklist to see how much of it holds true for you or others.

4.4: Prejudice, Discrimination, and Racism

How far should First Amendment rights extend? Read more about the subject at the First Amendment Center.

Learn more about institutional racism at the Southern Poverty Law Center's website.

Learn more about how prejudice develops by watching the short documentary "Eye of the Storm"

4.5: Intergroup Relationships

So you think you know your own assumptions? Check and find out with the Implicit Association Test

What do you know about the treatment of Australia's aboriginal population? Find out more by viewing the feature-length documentary *Our Generation*.

4.6: Race and Ethnicity in the United States

Are people interested in reclaiming their ethnic identities? Read the article *The White Ethnic Revival* and decide.

What is the current racial composition of the United States? Review up-to-the minute statistics at the United States Census Bureau.

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4.12: References

4.1: Introduction

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5.1: African Americans

5.1.1: The African American Struggle for Civil Rights

Learning Objectives

By the end of this section, you will be able to:

1. Explain how Presidents Truman and Eisenhower addressed civil rights issues
2. Discuss efforts by African Americans to end discrimination and segregation
3. Describe southern White peoples' response to the civil rights movement

In the aftermath of World War II, African Americans began to mount organized resistance to racially discriminatory policies in force throughout much of the United States. In the South, they used a combination of legal challenges and grassroots activism to begin dismantling the racial segregation that had stood for nearly a century following the end of Reconstruction. Community activists and civil rights leaders targeted racially discriminatory housing practices, segregated transportation, and legal requirements that African Americans and White people be educated separately. While many of these challenges were successful, life did not necessarily improve for African Americans. Hostile White people fought these changes in any way they could, including by resorting to violence.

Early Victories

During World War II, many African Americans had supported the "Double V Campaign," which called on them to defeat foreign enemies while simultaneously fighting against segregation and discrimination at home. After World War II ended, many returned home to discover that, despite their sacrifices, the United States was not willing to extend them any greater rights than they had enjoyed before the war. Particularly rankling was the fact that although African American veterans were legally entitled to draw benefits under the GI Bill, discriminatory practices prevented them from doing so. For example, many banks would not give them mortgages if they wished to buy homes in predominantly African American neighborhoods, which banks often considered too risky an investment. However, African Americans who attempted to purchase homes in White neighborhoods often found themselves unable to do so because of real estate covenants that prevented owners from selling their property to Black people. Indeed, when a Black family purchased a Levittown house in 1957, they were subjected to harassment and threats of violence.

CLICK AND EXPLORE

https://www.youtube.com/watch?v=xXQQ9o3R-Rc

For a look at the experiences of an African American family that tried to move to a White suburban community, view the 1957 documentary *Crisis in Levittown*.

The postwar era, however, saw African Americans make greater use of the courts to defend their rights. In 1944, an African American woman, Irene Morgan, was arrested in Virginia for refusing

to give up her seat on an interstate bus and sued to have her conviction overturned. In *Morgan v. the Commonwealth of Virginia* in 1946, the U.S. Supreme Court ruled that the conviction should be overturned because it violated the interstate commerce clause of the Constitution. This victory emboldened some civil rights activists to launch the Journey of Reconciliation, a bus trip taken by eight African American men and eight White men through the states of the Upper South to test the South's enforcement of the *Morgan* decision.

Other victories followed. In 1948, in *Shelley v. Kraemer*, the U.S. Supreme Court held that courts could not enforce real estate covenants that restricted the purchase or sale of property based on race. In 1950, the NAACP brought a case before the U.S. Supreme Court that they hoped would help to undermine the concept of "separate but equal" as espoused in the 1896 decision in *Plessy v. Ferguson*, which gave legal sanction to segregated school systems. *Sweatt v. Painter* was a case brought by Heman Marion Sweatt, who sued the University of Texas for denying him admission to its law school because state law prohibited integrated education. Texas attempted to form a separate law school for African Americans only, but in its decision on the case, the U.S. Supreme Court rejected this solution, holding that the separate school provided neither equal facilities nor "intangibles," such as the ability to form relationships with other future lawyers, that a professional school should provide.

Not all efforts to enact desegregation required the use of the courts, however. On April 15, 1947, Jackie Robinson started for the Brooklyn Dodgers, playing first base. He was the first African American to play baseball in the National League, breaking the color barrier. Although African Americans had their own baseball teams in the Negro Leagues, Robinson opened the gates for them to play in direct competition with White players in the major leagues. Other African American athletes also began to challenge the segregation of American sports. At the 1948 Summer Olympics, Alice Coachman, an African American, was the only American woman to take a gold medal in the games (Figure 5.1.1.1). These changes, while symbolically significant, were mere cracks in the wall of segregation.

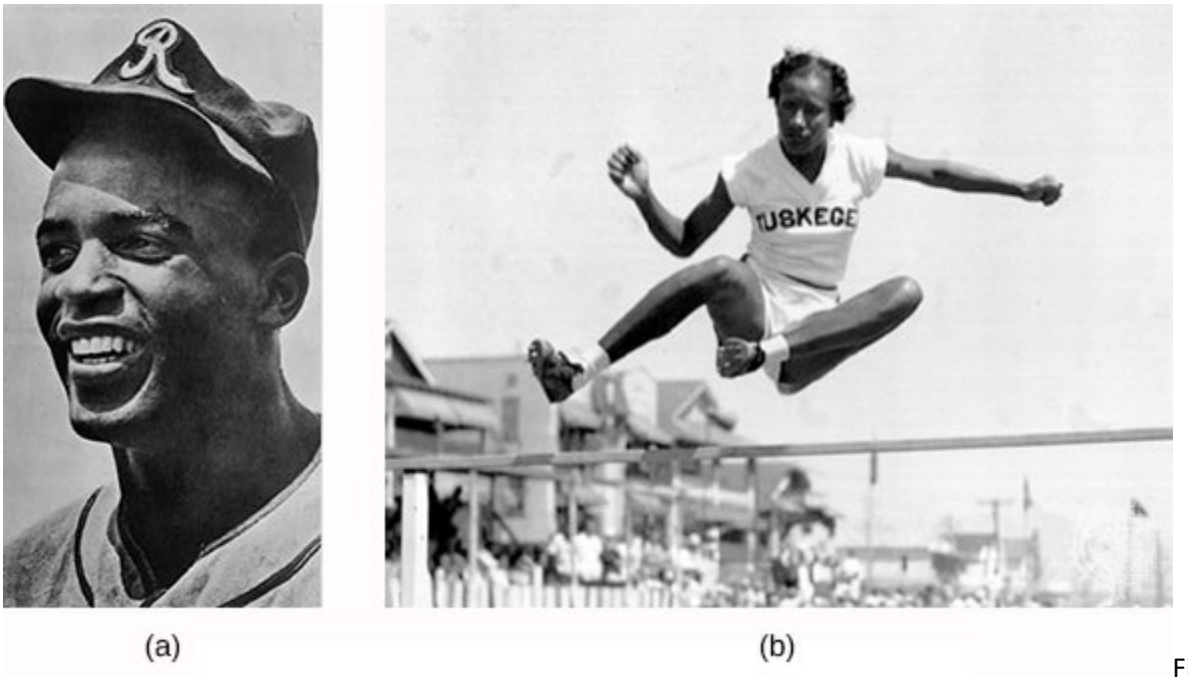

Figure 5.1.1.1: Baseball legend Jackie Robinson (a) was active in the civil rights movement. He served on the NAACP's board of directors and helped to found an African American-owned bank. Alice Coachman (b), who competed in track and field at Tuskegee University, was the first Black woman to win an Olympic gold medal.

Desegregation and Integration

Until 1954, racial segregation in education was not only legal but was required in seventeen states and permissible in several others (Figure 5.1.1.2). Utilizing evidence provided in sociological studies conducted by Kenneth Clark and Gunnar Myrdal, however, Thurgood Marshall, then chief counsel for the NAACP, successfully argued the landmark case *Brown v. Board of Education of Topeka, Kansas* before the U.S. Supreme Court led by Chief Justice Earl Warren. Marshall showed that the practice of segregation in public schools made African American students feel inferior. Even if the facilities provided were equal in nature, the Court noted in its decision, the very fact that some students were separated from others on the basis of their race made segregation unconstitutional.

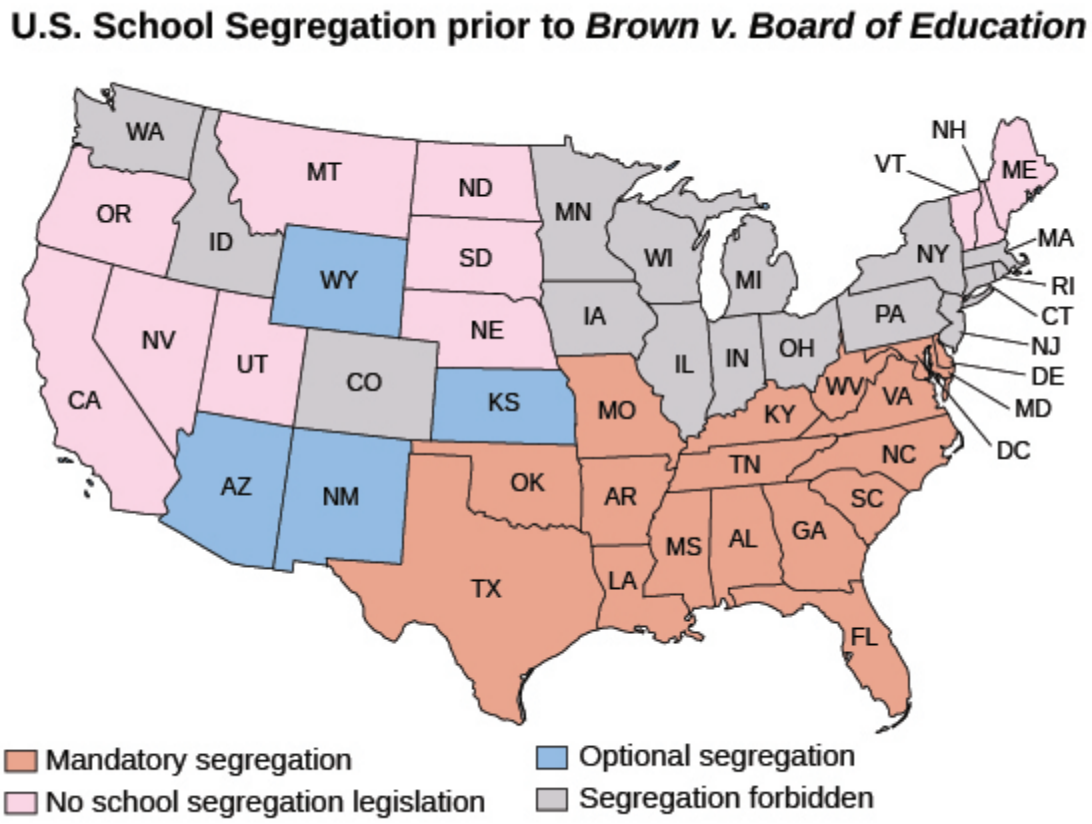

Figure 5.1.1.2: This map shows those states in which racial segregation in public education was required by law before the 1954 *Brown v. Board of Education* decision. In 1960, four years later, fewer than 10 percent of southern African American students attended the same schools as White students.

DEFINING AMERICAN

Thurgood Marshall on Fighting Racism

As a law student in 1933, Thurgood Marshall (Figure 5.1.1.3) was recruited by his mentor Charles Hamilton Houston to assist in gathering information for the defense of a Black man in Virginia accused of killing two White women. His continued close association with Houston led Marshall to aggressively defend Black people in the court system and to use the courts as the weapon by which equal rights might be extracted from the U.S. Constitution and a White racist system. Houston also suggested that it would be important to establish legal precedents regarding the *Plessy v. Ferguson* ruling of separate but equal.

Figure 5.1.1.3: In 1956, NAACP leaders (from left to right) Henry L. Moon, Roy Wilkins, Herbert Hill, and Thurgood Marshall present a new poster in the campaign against southern White racism. Marshall successfully argued the landmark case *Brown v. Board of Education* (1954) before the U.S. Supreme Court and later became the court's first African American justice.

By 1938, Marshall had become "Mr. Civil Rights" and formally organized the NAACP's Legal Defense and Education Fund in 1940 to garner the resources to take on cases to break the racist justice system of America. A direct result of Marshall's energies and commitment was his 1940 victory in a Supreme Court case, *Chambers v. Florida*, which held that confessions obtained by violence and torture were inadmissible in a court of law. In 1943, he won a case on behalf of Black parents protesting school segregation in suburban Hillburn, New York. His most well-known case was *Brown v. Board of Education* in 1954, which held that state laws establishing separate public schools for Black and White students were unconstitutional.

Later in life, Marshall reflected on his career fighting racism in a speech at Howard Law School in 1978:

Be aware of that myth, that everything is going to be all right. Don't give in. I add that, because it seems to me, that what we need to do today is to refocus. Back in the 30s and 40s, we could go no place but to court. We knew then, the court was not the final solution. Many of us knew the final solution would have to be politics, if for no other reason, politics is cheaper than lawsuits. So now we have both. We have our legal arm, and we have our political arm. Let's use them both. And don't listen to this myth that it can be solved by either or that it has already been solved. Take it from me, it has not been solved.

When Marshall says that the problems of racism have not been solved, to what was he referring?

Plessy v. Fergusson had been overturned. The challenge now was to integrate schools. A year later, the U.S. Supreme Court ordered southern school systems to begin **desegregation** "with all deliberate speed." Some school districts voluntarily integrated their schools. For many other districts, however, "deliberate speed" was very, very slow.

It soon became clear that enforcing *Brown v. the Board of Education* would require presidential intervention. Eisenhower did not agree with the U.S. Supreme Court's decision and did not wish to force southern states to integrate their schools. However, as president, he was responsible for doing so. In 1957, Central High School in Little Rock, Arkansas, was forced to accept its first nine African American students, who became known as the **Little Rock Nine**. In response, Arkansas governor Orval Faubus called out the state National Guard to prevent the students from attending classes. The soldiers turned away the first student to attempt entry, Elizabeth Eckford, leaving the 15-year-old to be followed and threatened by dozens of White adults. A subsequent attempt by the nine students to attend school resulted in mob violence. Eisenhower then placed the Arkansas National Guard under federal control and sent the U.S. Army's 101st airborne unit to escort the students to and from school as well as from class to class (Figure 5.1.1.4). This was the first time since the end of Reconstruction that federal troops once more protected the rights of African Americans in the South.

Figure 5.1.1.4: In 1957, U.S. soldiers from the 101st Airborne were called in to escort the Little Rock Nine into and around formerly all-White Central High School in Little Rock, Arkansas.

Throughout the course of the school year, the Little Rock Nine were insulted, harassed, and physically assaulted; nevertheless, they returned to school each day. At the end of the school year, the first African American student graduated from Central High. At the beginning of the 1958–1959 school year, Orval Faubus ordered all Little Rock's public schools closed. In the opinion of White segregationists, keeping all students out of school was preferable to having them attend integrated schools. In 1959, the U.S. Supreme Court ruled that the school had to be reopened and that the process of desegregation had to proceed.

School segregation was not only a Southern issue. New York City became a segregation flash point due to significant deficiencies in resources, teacher quality, and services offered to schools

serving Black students. In 1957, parent and activist Mae Mallory was the leader of what became known as the **Harlem Nine**, a group of nine mothers who filed suit and kept their children out of school based on inadequate and unequal education. Mallory and the other mothers asked for an "open transfer" policy that allowed them to send their children to schools outside of their district. City officials and local media fought back by declaring Mallory and her group to be unfit parents, but the Harlem Nine eventually won the right to transfer their children. Most importantly, they forced the local court and the New York City Board of Education to declare that segregation still existed in New York City schools.

White Responses

Efforts to desegregate public schools led to a backlash among many White people. Many greeted the *Brown* decision with horror; some World War II veterans questioned how the government they had fought for could betray them in such a fashion. Some White parents promptly withdrew their children from public schools and enrolled them in all-White private academies, many newly created for the sole purpose of keeping White children from attending integrated schools. Often, these "academies" held classes in neighbors' basements or living rooms.

Other White southerners turned to state legislatures or courts to solve the problem of school integration. Orders to integrate school districts were routinely challenged in court. When the lawsuits proved unsuccessful, many southern school districts responded by closing all public schools, as Orval Faubus had done after Central High School was integrated. One county in Virginia closed its public schools for five years rather than see them integrated. Besides suing school districts, many southern segregationists filed lawsuits against the NAACP, trying to bankrupt the organization. Many national politicians supported the segregationist efforts. In 1956, ninety-six members of Congress signed "The Southern Manifesto," in which they accused the U.S. Supreme Court of misusing its power and violating the principle of **states' rights**, which maintained that states had rights equal to those of the federal government.

Unfortunately, many White southern racists, frightened by challenges to the social order, responded with violence. When Little Rock's Central High School desegregated, an irate Ku Klux Klansman from a neighboring community sent a letter to the members of the city's school board in which he denounced them as Communists and threatened to kill them. White rage sometimes erupted into murder. In August 1955, both White and Black Americans were shocked by the brutality of the murder of Emmett Till. Till, a fourteen-year-old boy from Chicago, had been vacationing with relatives in Mississippi. While visiting a White-owned store, he had made a remark to the White woman behind the counter. A few days later, the husband and brother-in-law of the woman came to the home of Till's relatives in the middle of the night and abducted the boy. Till's beaten and mutilated body was found in a nearby river three days later. Till's mother insisted on an open-casket funeral; she wished to use her son's body to reveal the brutality of southern racism. The murder of a child who had been guilty of no more than a casual remark captured the nation's attention, as did the acquittal of the two men who admitted killing him.

The Montgomery Bus Boycott

One of those inspired by Till's death was Rosa Parks, an NAACP member from Montgomery, Alabama, who became the face of the 1955–1956 **Montgomery Bus Boycott**. City ordinances in Montgomery segregated the city's buses, forcing African American passengers to ride in the back section. They had to enter through the rear of the bus, could not share seats with White passengers, and, if the front of the bus was full and a White passenger requested an African American's seat, had to relinquish their place to the White rider. The bus company also refused to hire African American drivers even though most of the people who rode the buses were Black.

On December 1, 1955, Rosa Parks refused to give her seat to a White man, and the Montgomery police arrested her. After being bailed out of jail, she decided to fight the laws requiring segregation in court. To support her, the Women's Political Council, a group of African American female activists, organized a boycott of Montgomery's buses. News of the boycott spread through newspaper notices and by word of mouth; ministers rallied their congregations to support the Women's Political Council. Their efforts were successful, and forty thousand African American riders did not take the bus on December 5, the first day of the boycott.

Other African American leaders within the city embraced the boycott and maintained it beyond December 5, Rosa Parks' court date. Among them was a young minister named Martin Luther King, Jr. For the next year, Black Montgomery residents avoided the city's buses. Some organized carpools. Others paid for rides in African American-owned taxis, whose drivers reduced their fees. Most walked to and from school, work, and church for 381 days, the duration of the boycott. In June 1956, an Alabama federal court found the segregation ordinance unconstitutional. The city appealed, but the U.S. Supreme Court upheld the decision. The city's buses were desegregated.

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5.1.2: Reconstruction

- 5.1.2.1: Introduction
- 5.1.2.2: Politics of Reconstruction
- 5.1.2.3: Racial Violence in Reconstruction
- 5.1.2.4: The End of Reconstruction

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5.1.2.1: Introduction

After the Civil War, much of the South lay in ruins. “It passes my comprehension to tell what became of our railroads,” one South Carolinian told a Northern reporter. “We had passably good roads, on which we could reach almost any part of the State, and the next week they were all gone—not simply broken up, but gone. Some of the material was burned, I know, but miles and miles of iron have actually disappeared, gone out of existence.” He might as well have been talking about the entire antebellum way of life. The future of the South was uncertain. How would these states be brought back into the Union? Would they be conquered territories or equal states? How would they rebuild their governments, economies, and social systems? What rights did freedom confer upon formerly enslaved people?

The answers to many of Reconstruction’s questions hinged upon the concepts of citizenship and equality. The era witnessed perhaps the most open and widespread discussions of citizenship since the nation’s founding. It was a moment of revolutionary possibility and violent backlash. African Americans and Radical Republicans pushed the nation to finally realize the Declaration of Independence’s promises that “all men were created equal” and had “certain, unalienable rights.” White Democrats granted African Americans legal freedom but little more. When black Americans and their radical allies succeeded in securing citizenship for freedpeople, a new fight commenced to determine the legal, political, and social implications of American citizenship. Resistance continued, and Reconstruction eventually collapsed. In the South, limits on human freedom endured and would stand for nearly a century more.

Learning Objectives

After completing this section, students should:

- Have a general understanding of the history of African Americans within the context of American History.
- Be motivated to become interested and active in African American history by comparing current events with historical information.
- Be able to discuss the origins, evolution, and spread of racial slavery.
- Be able to describe the creation of a distinct African-American culture and how that culture became part of the broader American culture.
- Be able to analyze the long-term implications of Reconstruction for African Americans.
- Be able to judge the legacy of the Reconstruction.

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5.1.2.2: Politics of Reconstruction

Figure \PageIndex{1}: *An 1862 photograph of former slaves from Virginia. Cumberland Landing, VA. Group of 'Contrabands' at Foller's House* by James F. Gibson is in the Public Domain.

Reconstruction—the effort to restore southern states to the Union and to redefine African Americans' place in American society—began before the Civil War ended. President Abraham Lincoln began planning for the reunification of the United States in the fall of 1863. With a sense that Union victory was imminent and that he could turn the tide of the war by stoking Unionist support in the Confederate states, Lincoln issued a proclamation allowing Southerners to take an oath of allegiance. When just ten percent of a state's voting population had taken such an oath, loyal Unionists could then establish governments. These so-called Lincoln governments sprang up in pockets where Union support existed like Louisiana, Tennessee, and Arkansas. Unsurprisingly, these were also the places that were exempted from the liberating effects of the Emancipation Proclamation.

Initially proposed as a war aim, Lincoln's Emancipation Proclamation committed the United States to the abolition of slavery. However, the Proclamation freed only slaves in areas of rebellion and left more than 700,000 in bondage in Delaware, Kentucky, Maryland, and Missouri as well as Union-occupied areas of Louisiana, Tennessee, and Virginia.

To cement the abolition of slavery, Congress passed the Thirteenth Amendment on January 31, 1865. The amendment and legally abolished slavery "except as a punishment for crime whereof the party shall have been duly convicted." Section Two of the amendment granted Congress the "power to enforce this article by appropriate legislation." State ratification followed, and by the end of the year the requisite three-fourths states had approved the amendment, and four million people were forever free from the slavery that had existed in North America for 250 years.

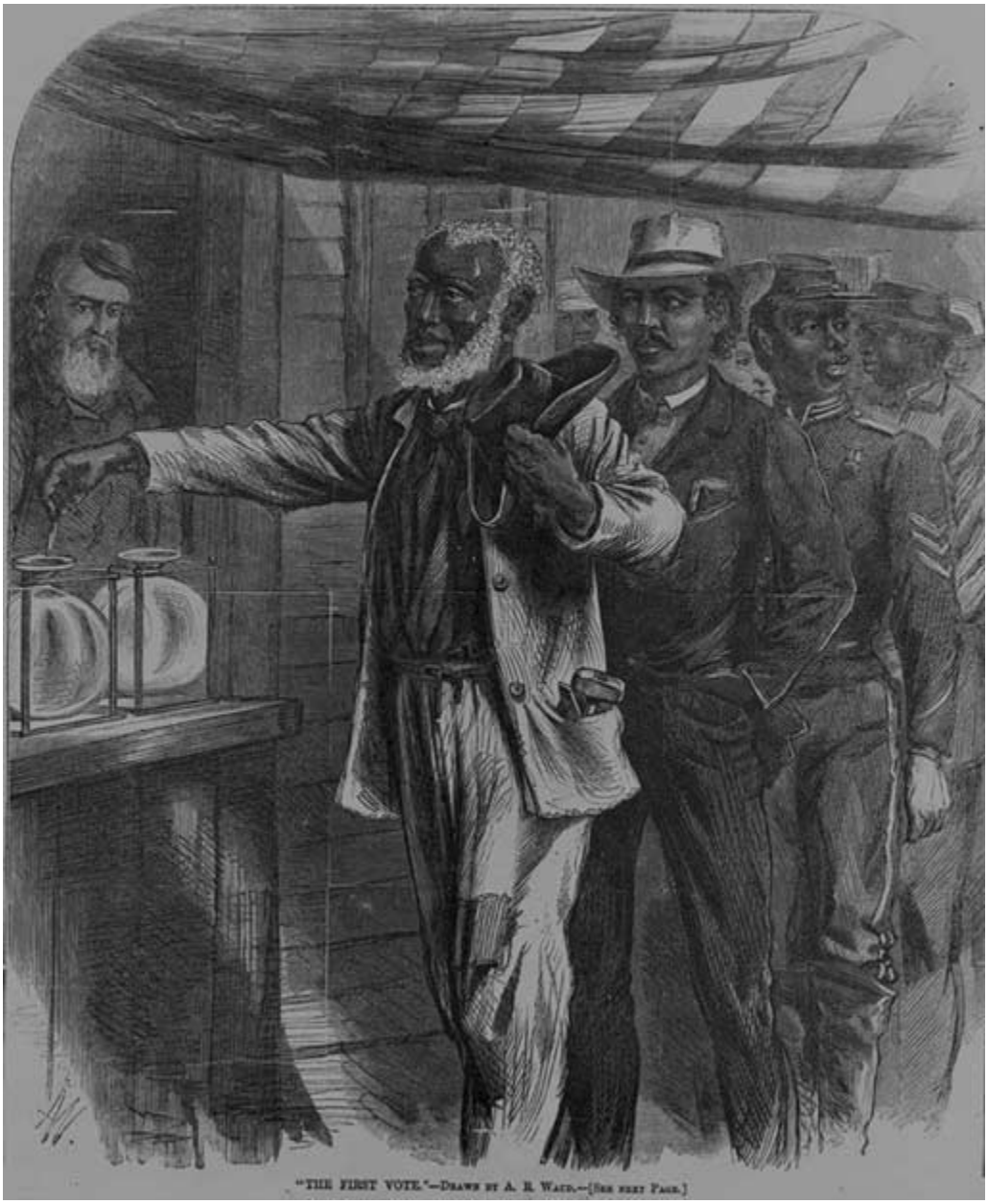

Figure \PageIndex{2}: *An 1867 political drawing depicts newly enfranchised black men voting during Reconstruction. The First Vote* by Alfred R. Waud is in the Public Domain.

Lincoln's policy was lenient, conservative, and short-lived. Reconstruction changed when John Wilkes Booth shot Lincoln on April 14, 1865, during a performance of "Our American Cousin" at the Ford Theater. Treated rapidly and with all possible care, Lincoln succumbed to his wounds the following morning, leaving a somber pall over the North and especially among African Americans.

The assassination of Abraham Lincoln propelled Vice President Andrew Johnson into the executive office in April 1865. Johnson, a states' rights, strict-constructionist and unapologetic racist from Tennessee, offered southern states a quick restoration into the Union. His

Reconstruction plan required provisional southern governments to void their ordinances of secession, repudiate their Confederate debts, and ratify the Thirteenth Amendment. On all other matters, the conventions could do what they wanted with no federal interference. He pardoned all Southerners engaged in the rebellion with the exception of wealthy planters who possessed more than $20,000 in property. The southern aristocracy would have to appeal to Johnson for individual pardons. In the meantime, Johnson hoped that a new class of Southerners would replace the extremely wealthy in leadership positions.

Many southern governments enacted legislation that reestablished antebellum power relationships. South Carolina and Mississippi passed laws known as Black Codes to regulate black behavior and impose social and economic control. These laws granted some rights to African Americans, like the right to own property, to marry or to make contracts. But they also denied fundamental rights. White lawmakers forbade black men from serving on juries or in state militias, refused to recognize black testimony against white people, apprenticed orphan children to their former masters, and established severe vagrancy laws. Mississippi's vagrant law required all freedmen to carry papers proving they had means of employment. If they had no proof, they could be arrested and fined. If they could not pay the fine, the sheriff had the right to hire out his prisoner to anyone who was willing to pay the tax. Similar ambiguous vagrancy laws throughout the South reasserted control over black labor in what one scholar has called "slavery by another name." Black codes effectively criminalized black leisure, limited their mobility, and locked many into exploitative farming contracts. Attempts to restore the antebellum economic order largely succeeded.

These laws and outrageous mob violence against black southerners led Republicans to call for a more dramatic Reconstruction. So when Johnson announced that the southern states had been restored, congressional Republicans refused to seat delegates from the newly reconstructed states.

Republicans in Congress responded with a spate of legislation aimed at protecting freedmen and restructuring political relations in the South. Many Republicans were keen to grant voting rights for freedmen in order to build a new powerful voting bloc. Some Republicans, like United States Congressman Thaddeus Stevens, believed in racial equality, but the majority were motivated primarily by the interest of their political party. The only way to protect Republican interests in the South was to give the vote to the hundreds of thousands of black men. Republicans in Congress responded to the codes with the Civil Rights Act of 1866, the first federal attempt to constitutionally define all American-born residents (except Native peoples) as citizens. The law also prohibited any curtailment of citizens' "fundamental rights."

The Fourteenth Amendment developed concurrently with the Civil Rights Act to ensure its constitutionality. The House of Representatives approved the Fourteenth Amendment on June 13, 1866. Section One granted citizenship and repealed the Taney Court's infamous Dred Scott (1857) decision. Moreover, it ensured that state laws could not deny due process or discriminate against particular groups of people. The Fourteenth Amendment signaled the federal government's willingness to enforce the Bill of Rights over the authority of the states.

Based on his belief that African Americans did not deserve rights, President Johnson opposed both the passage of the Fourteenth Amendment and vetoed the Civil Rights Act, as he believed black Americans did not deserve citizenship. With a two-thirds majority gained in the 1866 midterm elections, Republicans overrode the veto, and in 1867, they passed the first of two Reconstruction Acts, which dissolved state governments and divided the South into five military districts. Before states could rejoin the Union, they would have to ratify the Fourteenth Amendment, write new constitutions enfranchising African Americans, and abolish black codes. The Fourteenth Amendment was finally ratified on July 9, 1868.

Figure \PageIndex{3}: *The first African American Senator and members of the House of Representatives in Washington, D.C. First Colored Senator and Representatives* by Currier and Ives is in the Public Domain.

In the 1868 Presidential election, former Union General Ulysses S. Grant ran on a platform that proclaimed, “Let Us Have Peace” in which he promised to protect the new status quo. On the other hand, the Democratic candidate, Horatio Seymour, promised to repeal Reconstruction. Black Southern voters helped Grant him win most of the former Confederacy.

Reconstruction brought the first moment of mass democratic participation for African Americans. In 1860, only five states in the North allowed African Americans to vote on equal terms with whites. Yet after 1867, when Congress ordered Southern states to eliminate racial discrimination in voting, African Americans began to win elections across the South. In a short time, the South was transformed from an all-white, pro-slavery, Democratic stronghold to a collection of Republican-led states with African Americans in positions of power for the first time in American history.

Through the provisions of the Congressional Reconstruction Acts, black men voted in large numbers and also served as delegates to the state constitutional conventions in 1868. Black delegates actively participated in revising state constitutions. One of the most significant accomplishments of these conventions was the establishment of a public school system. While public schools were virtually nonexistent in the antebellum period, by the end of Reconstruction, every Southern state had established a public school system. Republican officials opened state institutions like mental asylums, hospitals, orphanages, and prisons to white and black residents, though often on a segregated basis. They actively sought industrial development, northern investment, and internal improvements.

African Americans served at every level of government during Reconstruction. At the federal level, Hiram Revels and Blanche K. Bruce were chosen as United States Senators from Mississippi. Fourteen men served in the House of Representatives. At least two hundred seventy other African American men served in patronage positions as postmasters, customs officials, assessors, and ambassadors. At the state level, more than 1,000 African American men held offices in the South. P. B. S. Pinchback served as Louisiana's Governor for thirty-four days after the previous governor was suspended during impeachment proceedings and was the only African American state governor until Virginia elected L. Douglass Wilder in 1989. Almost 800 African American men served as state legislators around the South with African Americans at one time making up a majority in the South Carolina House of Representatives.

African American officeholders came from diverse backgrounds. Many had been born free or had gained their freedom before the Civil War. Many free African Americans, particularly those in South Carolina, Virginia, and Louisiana, were wealthy and well educated, two facts that distinguished them from much of the white population both before and after the Civil War. Some like Antione Dubuclet of Louisiana and William Breedlove from Virginia owned slaves before the Civil War. Others had helped slaves escape or taught them to read like Georgia's James D. Porter.

The majority of African American officeholders, however, gained their freedom during the war. Among them were skilled craftsmen like Emanuel Fortune, a shoemaker from Florida, minsters such as James D. Lynch from Mississippi, and teachers like William V. Turner from Alabama. Moving into political office was a natural continuation of the leadership roles they had held in their former slave communities.

By the end of Reconstruction in 1877, more than 2,000 African American men had served in offices ranging from mundane positions such as local Levee Commissioner to United States Senator. When the end of Reconstruction returned white Democrats to power in the South, all but a few African American officeholders lost their positions. After Reconstruction, African Americans did not enter the political arena again in large numbers until well into the twentieth century.

The Meaning of Black Freedom

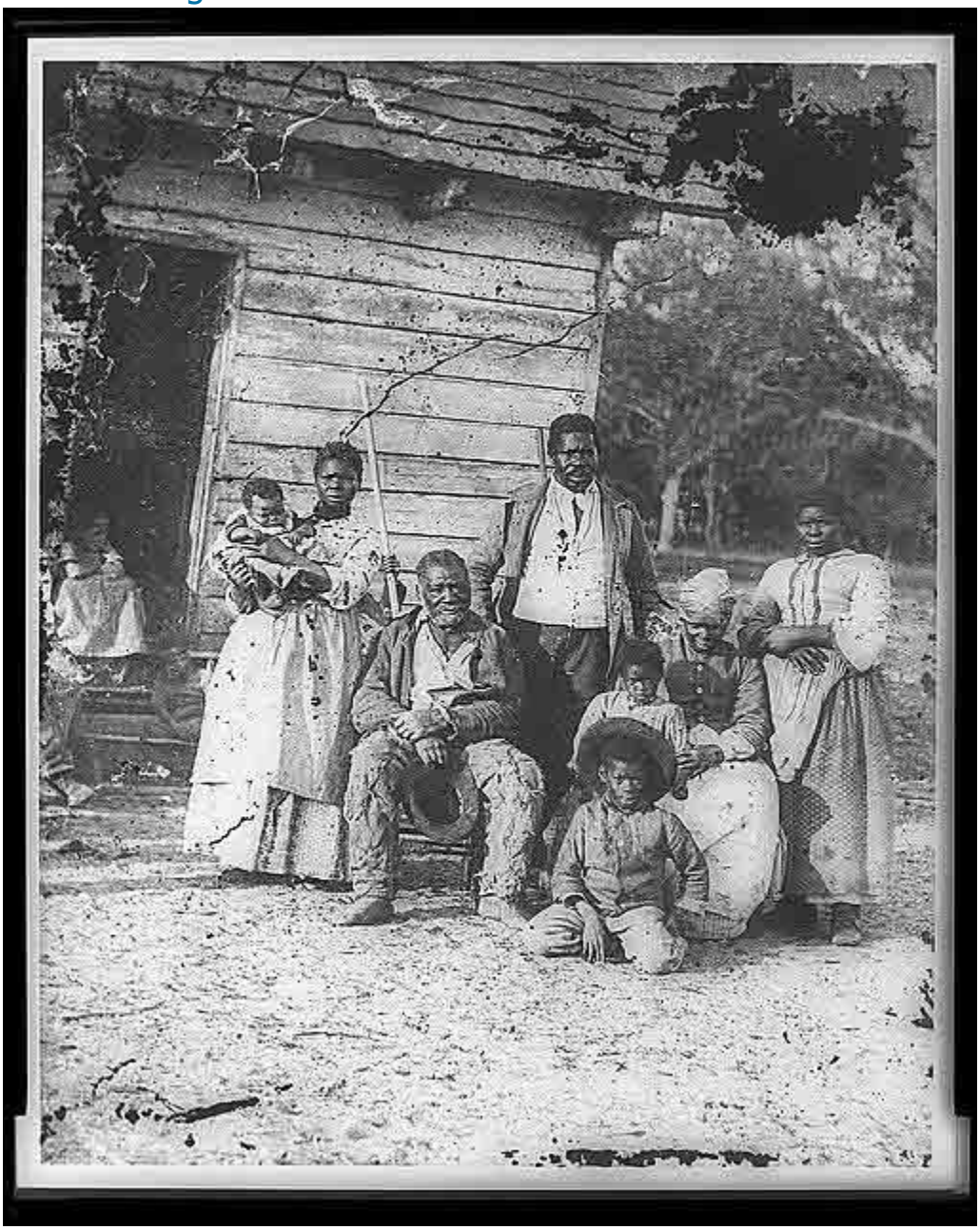

Figure \PageIndex{4}: *An 1862 photograph showing a family of former slaves on a South Carolina plantation. Family of African American Slaves on Smith's Plantation Beaufort South Carolina* by Timothy O'Sullivan is in the Public Domain.

Figure \PageIndex{5}: *In an 1866 sketch, black women learning a trade (sewing) in a school run by the Freedmen's Bureau in Richmond, Virginia during Reconstruction. Glimpses at the Freedmen* by Jas. E. Taylor is in the Public Domain.

Figure \PageIndex{6}: *A photograph from the late nineteenth century of African-American church members in Georgia standing in front of their church. African Americans Standing Outside of a Church* by unknown photographer and prepared by W. E. B. DuBois is in the Public Domain.

Land was one of the major desires of the freed people. Frustrated by responsibility for the growing numbers of freed people following his troops, General William T. Sherman issued Special Field Order No. 15 in which land in Georgia and South Carolina was to be set aside as a homestead for the freedpeople. Sherman lacked the authority to confiscate and distribute land, so this plan never fully took effect. One of the main purposes of the Freedmen's Bureau, however, was to redistribute lands to former slaves that had been abandoned and confiscated by the federal government. Even these land grants were short-lived. In 1866, land that ex-Confederates had left behind was reinstated to them.

Freedpeople's hopes of land reform were unceremoniously dashed as Freedmen's Bureau agents held meetings with the freedmen throughout the South, telling them the promise of land was not going to be honored and that instead they should plan to go back to work for their former owners as wage laborers. The policy reversal came as quite a shock. In one instance, Freedmen's Bureau Commissioner General Oliver O. Howard went to Edisto Island to inform the black population there of the policy change. The black commission's response was that "we were promised Homesteads by the government… You ask us to forgive the landowners of our island…The man who tied me to a tree and gave me 39 lashes and who stripped and flogged my mother and my sister… that man I cannot well forgive. Does it look as if he has forgiven me, seeing how he tries to keep me in a condition of helplessness?"

In working to ensure that crops would be harvested, agents sometimes coerced former slaves into signing contracts with their former masters. However, the Bureau also instituted courts where African Americans could seek redress if their employers were abusing them or not paying them. The last ember of hope for land redistribution was extinguished when Thaddeus Stevens and Charles Sumner's proposed land reform bills were tabled in Congress. Radicalism had its limits, and the Republican Party's commitment to economic stability eclipsed their interest in racial justice.

Another aspect of the pursuit of freedom was the reconstitution of families. Many freedpeople immediately left plantations in search of family members who had been sold away. Newspaper ads sought information about long-lost relatives. People placed these ads until the turn of the 20th century, demonstrating the enduring pursuit of family reunification. Freedpeople sought to gain control over their own children or other children who had been apprenticed to white masters either during the war or as a result of the Black Codes. Above all, freedpeople wanted freedom to control their families.

Many freedpeople rushed to solemnize unions with formal wedding ceremonies. Black people's desires to marry fit the government's goal to make free black men responsible for their own households and to prevent black women and children from becoming dependent on the government.

Freedpeople placed a great emphasis on education for their children and themselves. For many, the ability to finally read the Bible for themselves induced work-weary men and women to spend all evening or Sunday attending night school or Sunday school classes. It was not uncommon to find a one-room school with more than 50 students ranging in age from 3 to 80. As Booker T. Washington famously described the situation, "it was a whole race trying to go to school. Few were too young, and none too old, to make the attempt to learn."

Many churches served as schoolhouses and as a result became central to the freedom struggle. Free and freed black southerners carried well-formed political and organizational skills into freedom. They developed anti-racist politics and organizational skills through anti-slavery organizations turned church associations. Liberated from white-controlled churches, black Americans remade their religious worlds according to their own social and spiritual desires.

One of the more marked transformations that took place after emancipation was the proliferation of independent black churches and church associations. In the 1930s, nearly 40% of 663 black churches surveyed had their organizational roots in the post-emancipation era. Many independent black churches emerged in the rural areas and most of them had never been affiliated with white churches.

Many of these independent churches were quickly organized into regional, state, and even national associations, often by brigades of northern and midwestern free blacks who went to the South to help the freedmen. Through associations like the Virginia Baptist State Convention and the Consolidated American Baptist Missionary Convention, Baptists became the fastest growing post-emancipation denomination, building on their anti-slavery associational roots and carrying on the struggle for black political participation.

Tensions between Northerners and Southerners over styles of worship and educational requirements strained these associations. Southern, rural black churches preferred worship services with more emphasis on inspired preaching, while northern urban blacks favored more orderly worship and an educated ministry.

Perhaps the most significant internal transformation in churches had to do with the role of women—a situation that eventually would lead to the development of independent women's conventions in Baptist, Methodist, and Pentecostal churches. Women like Nannie Helen Burroughs and Virginia Broughton, leaders of the Baptist Woman's Convention, worked to protect black women from sexual violence from white men. Black representatives repeatedly articulated this concern in state constitutional conventions early in the Reconstruction era. In churches, women continued to fight for equal treatment and access to the pulpit as preachers, even though they were able to vote in church meetings.

Black churches provided centralized leadership and organization in post-emancipation communities. Many political leaders and officeholders were ministers. Churches were often the largest building in town and served as community centers. Access to pulpits and growing congregations, provided a foundation for ministers' political leadership. Groups like the Union League, militias, and fraternal organizations all used the regalia, ritual, and even hymns of churches to inform and shape their practice.

Black Churches provided space for conflict over gender roles, cultural values, practices, norms, and political engagement. With the rise of Jim Crow, black churches would enter a new phase of negotiating relationships within the community and the wider world.

Reconstruction and Women

Reconstruction involved more than the meaning of emancipation. Women also sought to redefine their roles within the nation and in their local communities. The abolitionist and women's rights movements simultaneously converged and began to clash. In the South, both black and white women struggled to make sense of a world of death and change. In Reconstruction, leading women's rights advocate Elizabeth Cady Stanton saw an unprecedented opportunity for disenfranchised groups. Women as well as black Americans, North and South could seize political rights. Stanton formed the Women's Loyal National League in 1863, which petitioned Congress for a constitutional amendment abolishing slavery. The Thirteenth Amendment marked a victory not only for the antislavery cause, but also for the Loyal League, proving women's political efficacy and the possibility for radical change. Now, as Congress debated the meanings of freedom, equality, and citizenship for former slaves, women's rights leaders saw an opening to advance transformations in women's status, too. On the tenth of May 1866, just one year after the war, the Eleventh National Women's Rights Convention met in New York City to discuss what many agreed was an extraordinary moment, full of promise for fundamental social change. Elizabeth Cady Stanton presided over the meeting. Also in attendance were prominent abolitionists with whom Stanton and other women's rights leaders had joined forces in the years leading up to the war. Addressing this crowd of social reformers, Stanton captured the radical spirit of the hour: "now in the reconstruction," she declared, "is the opportunity, perhaps for the century, to base our government on the broad principle of equal rights for all." Stanton chose her

universal language—"equal rights for all"—with intention, setting an agenda of universal suffrage. Thus, in 1866, the National Women's Rights Convention officially merged with the American Antislavery Society to form the American Equal Rights Association (AERA). This union marked the culmination of the longstanding partnership between abolitionist and women's rights advocates.

The AERA was split over whether black male suffrage should take precedence over universal suffrage, given the political climate of the South. Some worried that political support for freedmen would be undermined by the pursuit of women's suffrage. For example, AERA member Frederick Douglass insisted that the ballot was literally a "question of life and death" for southern black men, but not for women. Some African-American women challenged white suffragists in other ways. Frances Harper, for example, a free-born black woman living in Ohio, urged them to consider their own privilege as white and middle class. Universal suffrage, she argued, would not so clearly address the complex difficulties posed by racial, economic, and gender inequality.

These divisions came to a head early in 1867, as the AERA organized a campaign in Kansas to determine the fate of black and woman suffrage. Elizabeth Cady Stanton and her partner in the movement, Susan B. Anthony, made the journey to advocate universal suffrage. Yet they soon realized that their allies were distancing themselves from women's suffrage in order to advance black enfranchisement. Disheartened, Stanton and Anthony allied instead with white supremacists that supported women's equality. Many fellow activists were dismayed by Stanton and Anthony's willingness to appeal to racism to advance their cause.

These tensions finally erupted over conflicting views of the Fourteenth and Fifteenth Amendments. Women's rights leaders vigorously protested the Fourteenth Amendment. Although it established national citizenship for all persons born or naturalized in the United States, the amendment also introduced the word "male" into the Constitution for the first time. After the Fifteenth Amendment ignored "sex" as an unlawful barrier to suffrage, an omission that appalled Stanton, the AERA officially dissolved. Stanton and Anthony formed the National Woman Suffrage Association (NWSA), while those suffragists who supported the Fifteenth Amendment, regardless of its limitations, founded the American Woman Suffrage Association (AWSA).

The NWSA soon rallied around a new strategy: the 'New Departure'. This new approach interpreted the Constitution as already guaranteeing women the right to vote. They argued that by nationalizing citizenship for all persons, and protecting all rights of citizens—including the right to vote—the Fourteenth and Fifteenth Amendments guaranteed women's suffrage.

Broadcasting the New Departure, the NWSA encouraged women to register to vote, which roughly seven hundred did between 1868 and 1872. Susan B. Anthony was one of them and was arrested but then acquitted in trial. In 1875, the Supreme Court addressed this constitutional argument: acknowledging women's citizenship, but arguing that suffrage was not a right guaranteed to all citizens. This ruling not only defeated the New Departure, but also coincided with the Court's broader reactionary interpretation of the Reconstruction Amendments that significantly limited freedmen's rights. Following this defeat, many suffragists like Stanton

increasingly replaced the ideal of ‘universal suffrage’ with arguments about the virtue that white women would bring to the polls. These new arguments often hinged on racism and declared the necessity of white women voters to keep black men in check.

Advocates for women’s suffrage were largely confined to the North, but southern women were experiencing social transformations as well. The lines between refined white womanhood and degraded enslaved black femaleness were no longer so clearly defined. Moreover, during the war, southern white women had been called upon to do traditional man’s work, chopping wood and managing businesses. While white southern women decided whether and how to return to their prior status, African American women embraced new freedoms and a redefinition of womanhood.

Southern black women sought to redefine their public and private lives. Their efforts to control their labor met the immediate opposition of southern white women. Gertrude Clanton, a plantation mistress before the war, disliked cooking and washing dishes, so she hired an African American woman to do the washing. A misunderstanding quickly developed. The laundress, nameless in Gertrude’s records, performed her job and returned home. Gertrude believed that her money had purchased a day’s labor, not just the load of washing, and she became quite frustrated. Meanwhile, this washerwoman and others like her set wages and hours for themselves, and in many cases began to take washing into their own homes in order to avoid the surveillance of white women and the sexual threat posed by white men.

Similar conflicts raged across the South. White Southerners demanded that African American women work in the plantation home and instituted apprenticeship systems to place African American children in unpaid labor positions. African American women combated these attempts by refusing to work at jobs without fair pay or fair conditions and by clinging tightly to their children.

African American women formed clubs to bury their dead, to celebrate African American masculinity, and to provide aid to their communities. On May 1, 1865, African Americans in Charleston created the precursor to the modern Memorial Day by mourning the Union dead buried hastily on a race track-turned prison. Like their white counterparts, the 300 African American women who participated had been members of the local Patriotic Association, which aided freed people during the war. African American women continued participating in Federal Decoration Day ceremonies and, later, formed their own club organizations. Racial violence, whether city riots or rural vigilantes, continued to threaten these vulnerable households. Nevertheless, the formation and preservation of African American households became a paramount goal for African American women.

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5.1.2.3: Racial Violence in Reconstruction

Violence shattered the dream of biracial democracy. Still steeped in the violence of slavery, white Southerners could scarcely imagine black free labor. Congressional investigator, Carl Schurz, reported that in the summer of 1865, Southerners shared a near-unanimous sentiment that "You cannot make the negro work, without physical compulsion." Violence had been used in the antebellum period to enforce slave labor and to define racial difference. In the post-emancipation period, it was used to stifle black advancement and return to the old order.

Much of life in the antebellum South had been premised on slavery. The social order rested upon a subjugated underclass, and the labor system required unfree laborers. A notion of white supremacy and black inferiority undergirded it all. Whites were understood as fit for freedom and citizenship, blacks for chattel slave labor. The Confederate surrender at Appomattox Court House and the subsequent adoption by the U.S. Congress of the Thirteenth Amendment destroyed the institution of American slavery and threw the southern society into disarray. The foundation of southern society had been shaken, but southern whites used black codes and racial terrorism to reassert control of former slaves.

Figure \(\PageIndex{1}\): *Visit of the Ku-Klux* by Frank Bellew is in the Public Domain.

Racial violence in the Reconstruction period took three major forms: riots against black political authority, interpersonal fights, and organized vigilante groups. There were riots in southern cities several times during Reconstruction. The most notable were the riots in Memphis and New Orleans in 1866, but other large-scale urban conflicts erupted in places including Laurens, South Carolina in 1870; Colfax, Louisiana in 1873; another in New Orleans in 1874; Yazoo City, Mississippi in 1875; and Hamburg, South Carolina in 1876. Southern cities grew rapidly after the war as migrants from the countryside—particularly freed slaves—flocked to urban centers. Cities became centers of Republican control. But white conservatives chafed at the influx of black residents and the establishment of biracial politics. In nearly every conflict, white conservatives initiated violence in reaction to Republican rallies or conventions or elections in which black men were to vote. The death tolls of these conflicts remain incalculable, and victims were overwhelmingly black.

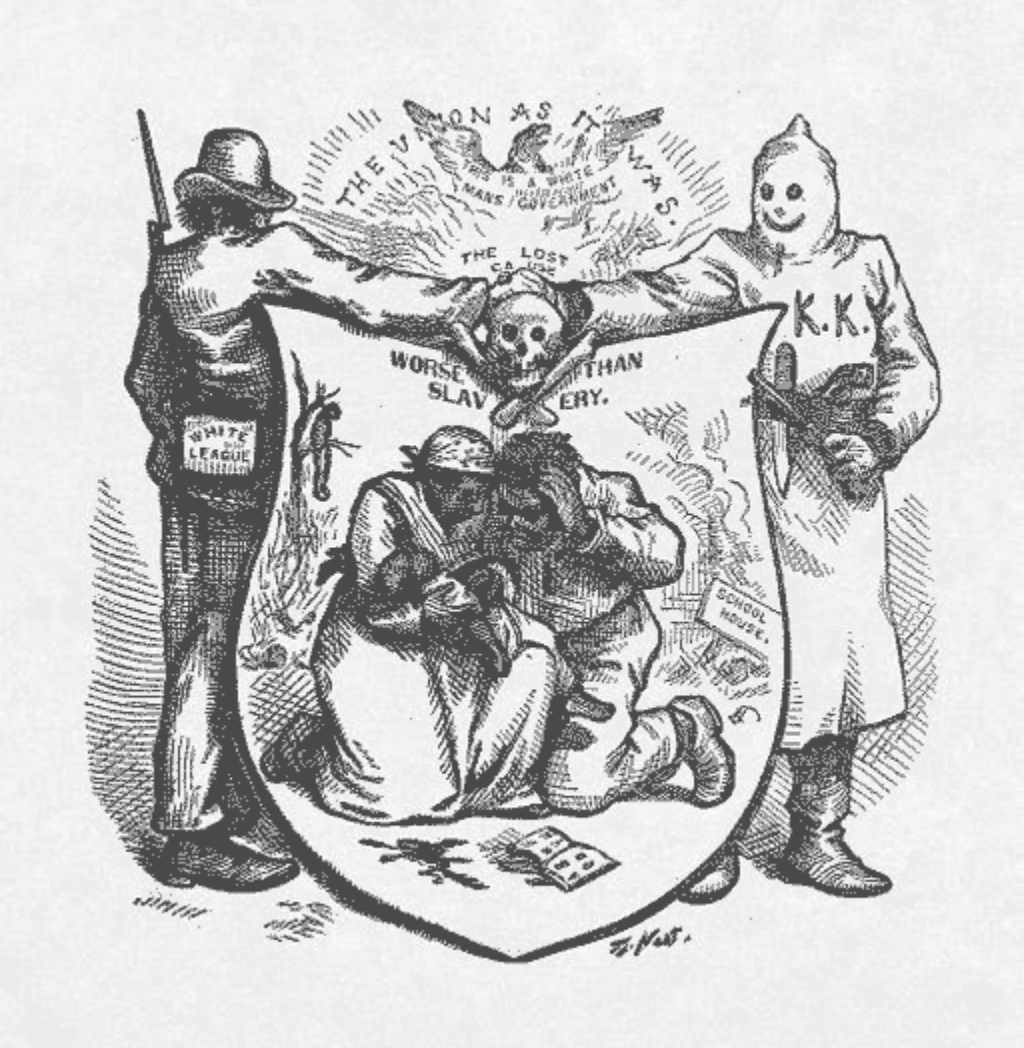

Figure \(\PageIndex{2}\): *The Union As It Was* by Thomas Nast is in the Public Domain.

Even everyday violence between individuals disproportionally targeted African Americans during Reconstruction. African Americans gained citizenship rights like the ability to serve on

juries as a result of the Civil Rights Act of 1866 and the Fourteenth Amendment. But southern white men were almost never prosecuted for violence against black victims. White men beat or shot black men with relative impunity, and did so over minor squabbles, labor disputes, longstanding grudges, and crimes of passion. These incidents sometimes were reported to local federal authorities like the army or the Freedmen's Bureau, but more often than not such violence was unreported and unprosecuted.

The violence committed by organized vigilante groups, sometimes called nightriders or bushwhackers was more often premeditated. Groups of nightriders operated under cover of darkness and wore disguises to curtail black political involvement. Nightriders harassed and killed black candidates and officeholders and frightened voters away from the polls. They also aimed to limit black economic mobility by terrorizing freedpeople who tried to purchase land or otherwise become too independent from the white masters they used to rely on. They were terrorists and vigilantes, determined to stop the erosion of the antebellum South, and they were widespread and numerous, operating throughout the South. The Ku Klux Klan emerged in the late 1860s as the most infamous of these groups.

The Ku Klux Klan was organized in 1866 in Pulaski, Tennessee and had spread to nearly every state of the former Confederacy by 1868. The Klan drew heavily from the antebellum southern elite, but Klan groups sometimes overlapped with criminal gangs or former Confederate guerilla groups. The Klan's reputation became so potent, and its violence so widespread, that many groups not formally associated with it were called Ku Kluxers, and to "Ku Klux" meant to commit vigilante violence. While it is difficult to differentiate Klan actions from those of similar groups, such as the White Line, Knights of the White Camellia, and the White Brotherhood, the distinctions hardly matter. All such groups were part of a web of terror that spread throughout the South during Reconstruction. In Panola County, Mississippi, between August 1870 and December 1872, twenty-four Klan-style murders occurred. And nearby, in Lafayette County, Klansmen drowned thirty black Mississippians in a single mass murder. Sometimes the violence was aimed at "uppity" black men or women who had tried to buy land or dared to be insolent toward a white southerner. Other times, as with the beating of Republican sheriff and tax collector Allen Huggins, the Klan targeted white politicians who supported freedpeople's civil rights. Numerous, perhaps dozens, of Republican politicians were killed, either while in office or while campaigning. Thousands of individual citizens, men and women, white and black, had their homes raided and were whipped, raped, or murdered.

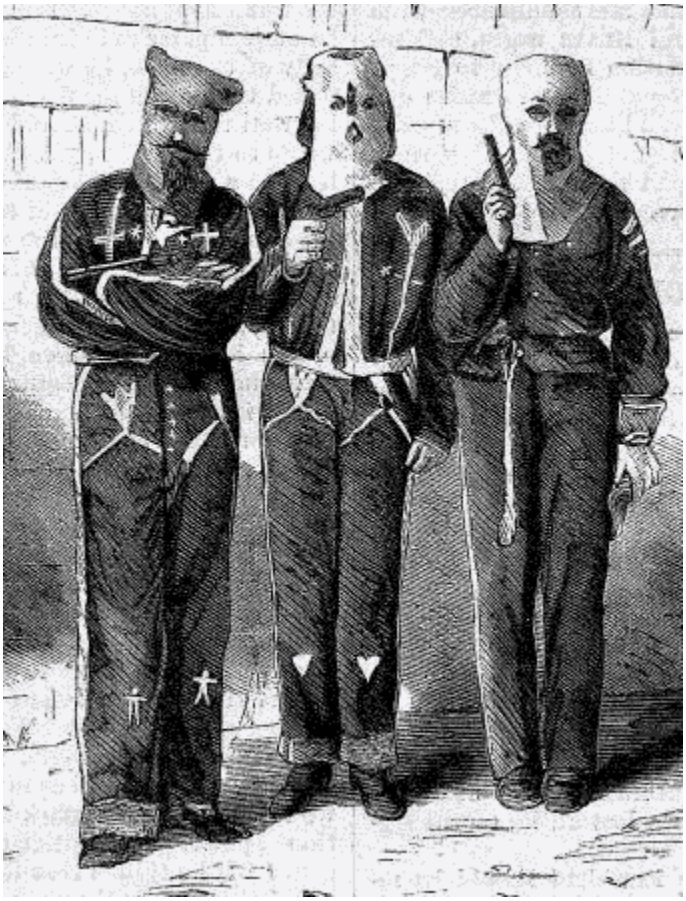

Figure \(\PageIndex{3}\): *1872 drawing of the Ku Klux Klan members from Tishamingo County, Mississippi.* Mississippi Ku Klux Klan by Unknown is in the Public Domain.

The federal government responded to southern paramilitary tactics by passing the Enforcement Acts between 1870 and 1871. The acts made it criminal to deprive African Americans of their civil rights. The acts also deemed violent Klan behavior as acts of rebellion against the United States and allowed for the use of U.S. troops to protect freedpeople. For a time, the federal government, its courts, and its troops, sought to put an end to the KKK and related groups. But the violence continued. By 1876, as southern Democrats reestablished "home rule" and "redeemed" the South from Republicans, federal opposition to the KKK weakened. National attention shifted away from the South and the activities of the Klan, but African Americans remained trapped in a world of white supremacy that restricted their economic, social, and political rights.

White conservatives would assert that Republicans, in denouncing violence, were "waving a bloody shirt" for political opportunity. The violence, according to many white conservatives, was fabricated, or not as bad as it was claimed, or an unavoidable consequence of the enfranchisement of African Americans. On December 22, 1871, R. Latham of Yorkville, South Carolina wrote to the *NEW YORK TRIBUNE*, voicing the beliefs of many white Southerners as he declared that "the same principle that prompted the white men at Boston, disguised as Indians,

to board, during the darkness of night, a vessel with tea, and throw her cargo into the Bay, clothed some of our people in Ku Klux gowns, and sent them out on missions technically illegal. Did the Ku Klux do wrong? You are ready to say they did and we will not argue the point with you… Under the peculiar circumstances what could the people of South Carolina do but resort to Ku Kluxing?"

Victims and witnesses to the violence told a different story. Sallie Adkins of Warren County, Georgia, was traveling with her husband, Joseph, a Georgia state senator, when he was assassinated by Klansmen on May 10, 1869. She wrote President Ulysses S. Grant, asking for both physical protection and justice. "I am no Statesman," she disclaimed, "I am only a poor woman whose husband has been murdered for his devotion to his country. I may have very foolish ideas of Government, States & Constitutions. But I feel that I have claims upon my country. The Rebels imprisoned my Husband. Pardoned Rebels murdered him. There is no law for the punishment of them who do deeds of this sort… I demand that you, President Grant, keep the pledge you made the nation—make it safe for any man to utter boldly and openly his devotion to the United States."

The political and social consequences of the violence were as lasting as the physical and mental trauma suffered by victims and witnesses. Terrorism worked to end federal involvement in Reconstruction and helped to usher in a new era of racial repression.

Figure \(\PageIndex{4}\): *An early 1900s photograph from Florida. A Southern Chain Gang* by Detroit Publishing Co. has no known copyright restrictions.

African Americans actively sought ways to shed the vestiges of slavery. Many discarded the names their former masters had chosen for them and adopted new names like “Freeman” and “Lincoln” that affirmed their new identities as free citizens. Others resettled far from their former plantations, hoping to eventually farm their own land or run their own businesses. By the end of Reconstruction, the desire for self-definition, economic independence, and racial pride coalesced in the founding of dozens of black towns across the South. Perhaps the most well-known of these towns was Mound Bayou, Mississippi, a Delta town established in 1887 by Isaiah Montgomery and Ben Green, former slaves of Joseph and Jefferson Davis. Residents of the town took pride in the fact that African Americans owned all of the property in town, including banks, insurance companies, shops, and the surrounding farms. The town celebrated African American cultural and economic achievements during their annual festival, Mound Bayou Days. These tight-knit communities provided African Americans with spaces where they could live free from the indignities of segregation and the exploitation of sharecropping on white-owned plantations.

Freedom also empowered African Americans in the South to rebuild families, make contracts, hold property and move freely for the first time. Republicans in the South attempted to transform the region into a free-labor economy like the North. Yet the transition from slave labor to free labor was never so clear. Well into the twentieth century, white Southerners used a combination of legal force and extra-legal violence to maintain systems of bound labor. Vagrancy laws enabled law enforcement to justify arrest of innocent black men and women, and the convict-lease system meant that even an arbitrary arrest could result in decades of forced, uncompensated labor. This new form of slavery continued until World War II.

Re-enslavement was only the most extreme example of an array of economic injustices. In the later nineteenth century, poor whites would form mobs and go “white-capping” to scare away black job-seekers. Lacking the means to buy their own farms, black farmers often turned to sharecropping. Sharecropping often led to cycles of debt that kept families bound to the land.

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5.1.2.4: The End of Reconstruction

Reconstruction concluded when national attention turned away from the integration of former slaves as equal citizens. White Democrats recaptured southern politics. Between 1868 and 1877, and accelerating after the Depression of 1873, national interest in Reconstruction dwindled as economic issues moved to the foreground. The biggest threat to Republican power in the South was violence and intimidation by white conservatives, staved off by the presence of federal troops in key southern cities. But the United States never committed the manpower required to restore order, if such a task was even possible. Reconstruction finally ended with the contested Presidential election of 1876. Republican Rutherford B. Hayes was given the presidency in exchange for the withdrawal of federal troops from the South. But by 1876, the vast majority of federal troops had already left.

Republicans and Democrats responded to the economic declines by shifting attention from Reconstruction to economic recovery. War weary from nearly a decade of bloody military and political strife, so-called Stalwart Republicans turned from idealism, focusing their efforts on economics and party politics. They grew to particular influence during Ulysses S. Grant's first term (1868-1872). After the death of Thaddeus Stevens in 1868 and the political alienation of Charles Sumner by 1870, Stalwart Republicans assumed primacy in Republican Party politics, putting Reconstruction on the defensive within the very party leading it.

Meanwhile, New Departure Democrats gained strength by distancing themselves from pro-slavery Democrats and Copperheads. They focused on business, economics, political corruption, and trade, instead of Reconstruction. In the South, New Departure Democrats were called Redeemers, and were initially opposed by Southerners who clung tightly to white supremacy and the Confederacy. But between 1869 and 1871, their home rule platform, asserting that good government was run by locals—meaning white Democrats, rather than black or white Republicans—helped end Reconstruction in three important states: Tennessee, Virginia, and Georgia.

In September 1873, Jay Cooke and Company declared bankruptcy, resulting in a bank run that spiraled into a six-year depression. The Depression of 1873 destroyed the nation's fledgling labor movement and helped quell northerners' remaining idealism about Reconstruction. In the South, many farms were capitalized entirely through loans. After 1873, most sources of credit vanished, forcing many landowners to default, driving them into an over-saturated labor market. Wages plummeted, contributing to the growing system of debt peonage in the South that trapped workers in endless cycles of poverty. The economic turmoil enabled the Democrats to take control of the House of Representatives after the 1874 elections.

On the eve of the 1876 Presidential election, the nation still reeled from depression. The Grant administration found itself no longer able to intervene in the South due to growing national hostility to interference in southern affairs. Scandalous corruption in the Grant Administration had sapped the national trust. By 1875, Democrats in Mississippi hatched the Mississippi Plan, a wave of violence designed to suppress black voters. The state's Republican governor urged federal involvement, but national Republicans ignored the plea.

Meanwhile, the Republican candidate for governor of Ohio, Rutherford B. Hayes, won big without mentioning Reconstruction, focusing instead on avoiding corruption, recovering the economy, and discouraging alcohol use. His success entered him into the running as a potential Presidential candidate. The stage was set for an election that would end Reconstruction as a national issue.

Republicans chose Rutherford B. Hayes as their nominee while Democrats chose Samuel J. Tilden, who ran on honest politics and home rule in the South. Allegations of voter fraud and intimidation emerged in the three states where Reconstruction held strong. Florida, Louisiana, and South Carolina would determine the president. Indeed, those elections were fraught with violence and fraud because of the impunity with which white conservatives felt they could operate in detering Republican voters. A special electoral commission voted along party lines—eight Republicans for, seven Democrats against—in favor of Hayes.

Democrats threatened to boycott Hayes' inauguration. Rival governments arose claiming to recognize Tilden as the rightfully elected President. Republicans, fearing another sectional crisis, reached out to Democrats. In the Compromise of 1877 Democrats conceded the presidency to Hayes on the promise that all remaining troops would be removed from the South. In March 1877, Hayes was inaugurated; in April, the remaining troops were ordered out of the South. The Compromise allowed southern Democrats to return to power, no longer fearing reprisal from federal troops or northern politicians for their flagrant violence and intimidation of black voters.

After 1877, Republicans no longer had the political capital to intervene in the South in cases of violence and electoral fraud. In certain locations with large populations of African Americans like South Carolina, freedpeople continued to hold some local offices for several years. Yet, with its most revolutionary aims thwarted by 1868, and economic depression and political turmoil taking even its most modest promises off the table by the early 1870s, most of the promises of Reconstruction were unmet.

Conclusion

The end of Reconstruction, and the federal government's attempts to create a bi-racial democracy in the former Confederate states, ushered in a new era of white supremacy. After taking back control of state legislatures, conservative white Democrats created new state Constitutions that disfranchised black voters through arbitrary literary tests and burdensome poll taxes. Southern legislators also passed stringent new segregation or "Jim Crow" laws that rigidly segregated black and white passengers on trains and street cars and prohibited or limited African-American access to public places such as libraries, parks, hotels, and restaurants.

The federal government's failure to maintain the promises and ideals of Reconstruction meant that African-Americans would continue to fight for civil rights and equality throughout the late nineteenth and twentieth century. Only in the 1960s, during what some historians call the Second Reconstruction, would federal legislation finally strike down voter and segregation laws passed after the first Reconstruction that denied civil rights and equality under the law to African-Americans.

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5.1.3: Video: How To Reduce the Wealth Gap Between Black and White Americans

The racial wealth gap in the United States is shocking: white families have a median wealth nearly 10 times greater than that of Black families. How did we get here, and how can we stop the gap from growing? Wealth equity strategist Kedra Newsom Reeves provides a short history on the origins and perpetuation of racial wealth inequality in the US—and outlines four ways financial institutions can expand opportunity for Black individuals, families, entrepreneurs, and communities.

https://www.youtube.com/watch?v=j-6zwv31qjg

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5.1.4: Case Study: Hamilton Growers to Pay $500,000 to Settle EEOC Race / National Origin Discrimination Lawsuit

Farm Fired or Disadvantaged U.S. Workers, Especially Blacks, Federal Agency Charged

ATLANTA - Hamilton Growers, Inc., doing business as Southern Valley Fruit and Vegetable, Inc., an agricultural farm in Norman Park, Ga., has agreed to pay $500,000 to a class of American seasonal workers - many of them African-American - who, the EEOC alleged, were subjected to discrimination based on their national origin and/or race, the agency announced today. The agreement resolves a lawsuit filed by the EEOC in September 2011.

The EEOC's suit had charged that the company unlawfully engaged in a pattern or practice of discrimination against American workers by firing virtually all American workers while retaining workers from Mexico during the 2009, 2010, and 2011 growing seasons. The agency also alleged that Hamilton Growers fired at least 16 African-American workers in 2009 based on race and/or national origin as their termination was coupled with race-based comments by a management official. Additionally, the lawsuit charged that Hamilton Growers provided lesser job opportunities to American workers by assigning them to pick vegetables in fields that had already been picked by foreign workers, which resulted in Americans earning less pay than their Mexican counterparts.

The EEOC also alleged that American workers were regularly subjected to different terms and conditions of employment, including delayed starting times and early stop times, or denied the opportunity to work at all, while Mexican workers were allowed to continue working. The settlement provides monetary relief to 19 persons who filed charges with the agency and other American workers harmed by the practices.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC filed suit after first attempting to reach a pre-litigation settlement through its conciliation process.

Forty of the workers intervened in the lawsuit and filed additional claims seeking relief under the Fair Labor Standards Act and Agricultural Worker Protection Act. The workers were represented by Georgia Legal Services, which worked collaboratively with the EEOC in resolving the case.

Pursuant to the consent decree settling the suit, the Hamilton Growers will exercise good faith in hiring and retaining qualified workers of American national origin and African-American workers for all farm work positions, including supervisory positions. Hamilton Growers will also implement non-discriminatory hiring measures, which include targeted recruitment and advertising, appointment of a compliance official, and training for positive equal employment opportunity management practices. The company has also pledged, among other things, to create a termination appeal process; extend rehire offers to aggrieved individuals from the 2009-2012 growing seasons; provide transportation for American workers; and limit contact between the alleged discriminating management officials and American workers. The decree also provides for posting anti-discrimination notices, record-keeping, and reporting to the EEOC.

"The EEOC will continue to protect the rights of vulnerable workers, such as the African American agricultural workers in this case, who were unlawfully terminated because of their race

and national origin," said EEOC General Counsel David Lopez. "Employers must ensure that their employment practices are in line with anti-discrimination laws, especially in light of the globalization of the labor force."

Robert Dawkins, regional attorney for the agency's Atlanta District office, said, "The EEOC is pleased to have effectuated positive change in the employment practices of agricultural employers who regularly hire foreign workers under the H-2A visa program for temporary or seasonal work. Federal law protects U.S. workers against an employer's discriminatory preferences, and we are optimistic that this resolution will go a long way in discouraging employers from discriminating against workers based on race and national origin in the hiring or firing process."

According to Bernice William Kimbrough, district director for the EEOC in Atlanta, "This case brings to the forefront an issue that is increasingly affecting members of agricultural communities throughout the nation. We will continue to focus our efforts to eradicate all forms of discrimination against the American workforce."

Class member Ashley Richardson noted that job opportunities remained limited in Southwest, Georgia and stressed the importance of the opportunity to return to Hamilton Growers without facing the discrimination of prior years.

Attorney Leah Lotto of Georgia Legal Services added, "Discrimination against American workers in the H-2A guest worker program is endemic. We hope this case will bring attention to that problem and that we will see Hamilton Growers demonstrate to its neighbors that offering job opportunities to American workers is not only legally required, but also the right thing to do for communities and local economies."

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on the agency's web site at www.eeoc.gov. Georgia Legal Services' Farmworker Rights Division provides no-cost representation to agricultural workers in Georgia. More information about the Farmworker Rights Division is available at www.gafr.org.

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5.1.5: Case Study: EEOC Sues New Mercer / Columbine Health Systems for National Origin Discrimination

Company's Practices Biased Against Employees From Africa, Federal Agency Charged

DENVER - New Mercer Commons Assisted Living Facility, a part of the northern Colorado-based Columbine Health Systems, violated federal law by discriminating against employees who emigrated from African countries, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

EEOC alleged that New Mercer Commons and Columbine Health Systems fired Ethiopian and Sudanese employees because of a bias against African immigrants, and implemented a new employment exam that disparately affected the continuing employment opportunities of its small, minority African workforce. EEOC further alleged that a white supervisor was fired in retaliation after she refused to participate in discriminatory practices against African employees.

According to EEOC's suit, Kiros Areghgn, an Ethiopian émigré, worked at New Mercer Commons for nine years as a personal care assistant before she was fired. After a change in management at the facility, her work conditions rapidly deteriorated. She was disciplined, her performance critiqued, her annual merit-based raise withheld for the first time, and management made hostile comments about her national origin and accent. On the day she was discharged, three other employees from Sudan were also fired. All four employees were told that they were being fired because they had not received passing scores on the newly implemented written exam.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits national origin discrimination and retaliation. EEOC filed the lawsuit (*EEOC v. Columbine Management Services, Inc. d/b/a Columbine Health Systems and The Worthington, Inc. d/b/a New Mercer Commons Assisted Living Facility*, Case No. 1:15-cv-01597 (D. Colorado)), after first attempting to resolve the matter through its pre-litigation administrative conciliation process. The suit seeks monetary damages including emotional distress and punitive damages for Areghgn and the other African employees who were fired, as well as for the white supervisor who was let go. EEOC also seeks injunctive relief prohibiting any future discrimination by the employers and mandating corrective action.

"Title VII prohibits not only intentional discrimination, but also the use of employment criteria, such as exams, that adversely affect employment opportunities, but are not sufficiently related to the employment position or required by business necessity," said EEOC Phoenix District Office Regional Attorney Mary Jo O'Neill. "Employers should validate employment tests to ensure the test is accurately measuring job-related functions. And employers must be careful when implementing these or other similar evaluative criteria to make sure that they comply with law and do not disparately screen out minority candidates who are perfectly able to perform the actual job duties."

EEOC Denver Field Office Director John Lowrie added, "Companies must make sure that bias does not infiltrate decision making, whether consciously or unconsciously."

Eliminating discriminatory policies affecting vulnerable workers who may be unaware of their rights under equal employment laws or reluctant or unable to exercise them, is one of six national priorities identified in EEOC's Strategic Enforcement Plan. So too is removing barriers in recruitment and hiring.

EEOC enforces federal laws prohibiting employment discrimination. Further information about EEOC is available on its website at www.eeoc.gov.

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5.1.6: Case Study: EEOC Sues Rosebud Restaurants for Sexual Harassment and Retaliation

Server Was Sexually Harassed and Fired After Complaining About Harassment and Racial Slurs Against African-Americans, Federal Agency Alleges

CHICAGO - Chicago company Rosebud Restaurants violated federal civil rights laws by subjecting a server to sexual harassment and then firing her after she complained about sexual harassment and objected to employees in the company referring to African-Americans by racial slurs, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed today.

According to Julianne Bowman, the EEOC's district director in Chicago, the EEOC's pre-suit investigation revealed that Tina Rosenthal, who worked as a server at Rosebud's now-closed Centro location, was subjected to sexual harassment by another server in 2013. The alleged harassment included unwelcome sexual comments and propositions and touching. Rosenthal complained about the harassment to managers, but Rosebud did not take adequate steps to address her complaints, the EEOC claims.

In September 2013, the EEOC sued Rosebud for failing to hire African-American applicants because of their race. After the EEOC filed suit, Rosenthal, who is white, objected during a company meeting to employees using racial slurs to refer to blacks. A few weeks later, according to the EEOC, Rosebud fired Rosenthal for pretextual reasons.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits sexual harassment and retaliation for complaining about or opposing discrimination.

The EEOC's race discrimination suit settled in May 2017 with a four-year consent decree providing $1.9 million in monetary relief for black applicants who were denied jobs at Rosebud. The decree also required hiring goals for African-Americans, recruiting of black applicants, monitoring of Rosebud's hiring practices, and training.

The EEOC filed yesterday's suit against Rosebud after first attempting to reach a pre-litigation settlement through its conciliation process. The case (EEOC v. Rosebud Restaurants, Inc., Civil Action No. 17-cv-6815 was filed in U.S. District Court for the Northern District of Illinois, Eastern Division and assigned to Judge Samuel Der-Yeghiayan.

"Here, Rosebud was already facing a race discrimination lawsuit, and compounded the problem by firing an employee who objected to racially offensive comments," said Greg Gochanour, regional attorney of the EEOC's Chicago District Office. "The EEOC takes retaliation very seriously. The employment discrimination protections that Title VII provides are hollow if employees who oppose discrimination face reprisal. We will not let a retaliatory termination go unchallenged."

The EEOC's Chicago District Office is responsible for processing charges of employment discrimination, administrative enforcement and the conduct of agency litigation in Illinois,

Wisconsin, Minnesota, Iowa and North and South Dakota, with Area Offices in Milwaukee and Minneapolis.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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5.1.7: Case Study: Whirlpool Corp. To Pay Over $1 Million For Harassing Black Female Worker, Judge Rules In Bench Trial

EEOC Said Company Tolerated Verbal Harassment Culminating in Physical Assault

NASHVILLE, Tenn. – The U.S. Equal Employment Opportunity Commission (EEOC) today announced a final court judgment of $1,073,261 against Whirlpool Corporation in a race and sex discrimination lawsuit on behalf of Carlota Freeman, an African American former employee at the company's LeVergne, Tenn.-based facility. The EEOC alleged in its lawsuit that the appliance manufacturing giant failed to protect Freeman from persistent harassment by a white male coworker, which ultimately resulted in her being physically assaulted by him.

Following a bench trial, Tennessee District Court Judge John T. Nixon last week awarded Freeman $773,261 in back pay and front pay, and $300,000 in compensatory damages for nonpecuniary injuries – the maximum allowed under federal law. During the four-day trial, the evidence showed that Freeman reported escalating offensive verbal conduct and gestures by the male coworker over a period of two months before he physically assaulted her; four levels of Whirlpool's management were aware of the escalating harassment; Whirlpool failed to take effective steps to stop the harassment; and, Freeman suffered devastating permanent mental injuries that will prevent her from working again as a result of the assault and Whirlpool's failure to protect her.

"It is deeply disturbing that such a large and sophisticated company would allow this sort of abuse to go unchecked – even up to the point where serious physical injuries are inflicted on one of its employees," said Commission Acting Chairman Stuart J. Ishimaru. "This significant monetary award

for a single individual should put Corporate America on notice that there can be extraordinary consequences for tolerating or overlooking egregious discrimination. The EEOC will not stand by while vulnerable workers like Ms. Freeman are forced to forego their economic security and fear for their safety because of their race and/or sex."

The EEOC filed suit against Whirlpool under Title VII of the Civil Rights Act in U.S. District Court for the Middle District of Tennessee (Civil Action No. 3:06-0593) after first attempting to reach a voluntary settlement through the agency's conciliation process.

EEOC Regional Attorney Faye Williams said, "Whirlpool unsuccessfully argued that because it had posted a policy prohibiting harassment, the company relieved itself of responsibility for Ms. Freeman's injuries. However, the court correctly pointed out that when those charged with enforcing a policy don't take that responsibility seriously, an employer has not met its duty under Title VII to prevent and stop illegal harassment in its workplace."

Carlota Freeman intervened in the case and was represented by Nashville attorneys Helen Rogers and Andy Allman. Whirlpool Corporation was represented by the Littler Mendelson law firm out of Chicago.

EEOC Trial Attorney Steve Dills said: "The purpose of equitable relief in Title VII cases is to make whole the victims of discrimination. Unfortunately, the judgment, in this case, is a bittersweet outcome because the injuries suffered by Ms. Freeman are so devastating."

According to its website, Whirlpool Corporation, with world headquarters in Benton Harbor, Mich., "is the world's leading manufacturer and marketer of major home appliances, with annual sales of approximately $19 billion, 70,000 employees, and 68 manufacturing and technology research centers around the world."

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

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5.1.8: Case Study: Indianapolis Hampton Inn Operators Held in Contempt for Breaching EEOC Consent Decree Settling Earlier Class Race Bias Suit

Federal Court Also Rules That EEOC Is Entitled to Submit a Petition for Fees and Costs

INDIANAPOLIS - A federal judge has held that the operators of the Hampton Inn on Shadeland Avenue in Indianapolis in contempt for failing to comply with five different conditions settling the U.S. Equal Employment Opportunity Commission's (EEOC) class race discrimination and retaliation lawsuit against the companies, the federal agency announced today.

The judge faulted Noble Management LLC and New Indianapolis Hotels for failing to observe five out of the seven conditions imposed in the settlement of the previous suit, that is, to: (1) properly post notices; (2) properly train management employees; (3) keep employment records; (4) institute a new hiring procedure for housekeeping employees; and (5) reinstate three former housekeeping employees. The judge also faulted Noble and New Indianapolis Hotels for comingling of medical records in employee personnel files.

The EEOC filed suit in U.S. District Court for the Northern District of Indiana against New Indianapolis Hotels LLC and Noble Management LLC *EEOC v. New Indianapolis Hotels LLC and Noble Management LLC*, 1:10-CV-01234-WTL-DKL in September 2010. The agency charged that the Hampton Inn on Shadeland Avenue fired African-American housekeepers because of their race and in retaliation for complaints about race discrimination. The agency also charged that the hotel paid lower wages to black housekeepers, excluded black housekeeping applicants on a systemic basis and failed to maintain records required by law. Such alleged conduct violates Title VII of the Civil Rights Act of 1964.

On Sept. 12, 2012, Judge William T. Lawrence entered a five-year consent decree resolving the EEOC's litigation against New Indianapolis and Noble Management. The decree provided $355,000 in monetary relief to approximately 75 African-American former housekeeping employees and applicants. The court also enjoined New Indianapolis and Noble Management from race discrimination and retaliation in the future. The decree also required training, notice posting, reinstatement of three former housekeeping employees, a new hiring procedure for housekeeping employees and ordered that the defendants maintain employment-related records.

On March 26, 2014, the EEOC moved for civil contempt sanctions based upon the defendants' failure to abide by the posting, training, recordkeeping, reinstatement and new hiring procedure provisions of the 2012 settlement.

Judge Lawrence ruled on March 23 that the defendants violated the posting, training, recordkeeping, reinstatement and new hiring procedure provisions of the 2012 decree. Defendants were ordered to pay more than $50,000 in back wages to the three former housekeepers whose reinstatement was delayed. Defendants were also ordered to: (1) provide monthly reporting to the EEOC on compliance with the new hiring procedure, recordkeeping and posting; (2) pay fines for late reporting; (3) allow random inspections by the EEOC subject to a fine, for failure to grant access; (4) pay fines for failure to post, destroying records or failing to distribute employment applications; (5) provide EEOC with any requested employment records within 15 days of a request; (6) cease comingling medical records; and (7) train management

employees. The posting and training provisions of the Decree were also extended by two years. Finally, Judge Lawrence determined that the EEOC should be permitted to submit a Petition for Attorney Fees and Costs incurred in the EEOC's attempts to gain Defendants' compliance with the Decree.

"We expect that when we resolve a case of systemic discrimination, the employer understands and agrees to meet the conditions of the settlement, said Laurie Young, the EEOC's Regional Attorney in Indianapolis. "We will not hesitate to move for Contempt when an employer blatantly disregards one or more of its obligations under the settlement. We hope, however, that this Contempt ruling will send a message to other employers concerning the importance of satisfying their obligations under a settlement with the EEOC."

Nancy Dean Edmonds, Jonathan Bryant, and Aimee McFerren, all trial attorneys in the Indianapolis District, also represented the EEOC in this contempt proceeding.

The EEOC's Indianapolis District Office is responsible for processing charges of discrimination, administrative enforcement, and the conduct of agency litigation in Indiana, Michigan, Kentucky, and Ohio, with area offices in Detroit, Louisville, and Cincinnati.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on the agency's website at www.eeoc.gov.

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5.1.9: Case Study: Skanska USA Building to Pay $95,000 to Settle EEOC Racial Harassment and Retaliation Lawsuit

Building Contractor Ignored Complaints of Racial Harassment and Fired Black Employees in Retaliation, Federal Agency Charges

MEMPHIS, Tenn. - Skanska USA Building, Inc., a building contractor headquartered in Parsippany, N.J., will pay $95,000 to settle a racial harassment and retaliation lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

According to the EEOC's suit, Skanska violated federal law by allowing workers to subject a class of black employees who were working as buck hoist operators to racial harassment, and by firing them for complaining to Skanska about the misconduct. Skanska served as the general contractor on the Methodist Le Bonheur Children's Hospital in Memphis, where the incidents in this lawsuit took place. The class of black employees worked for C-1, Inc. Construction Company, a minority-owned subcontractor for Skanska. Skanska awarded a subcontract to C-1 to provide buck hoist operations for the construction site and thereafter supervised all C-1 employees while at the work site.

The EEOC charged that Skanska failed to properly investigate complaints from the buck hoist operators that white employees subjected them to racially offensive comments and physical assault. The EEOC alleged that after Maurice Knox, one of the buck hoist operators, complained about having urine and feces thrown on him at the job site, Skanska cancelled its contract with C-1 Inc., and immediately fired all of its black buck hoist operators. With assistance from the Memphis Minority Business Council's president, Skanska reinstated the contract with C-1 and recalled the black buck hoist operators to work. The white employees, however, continued to subject the buck hoist operators to racial harassment on a daily basis.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC filed suit (*EEOC v. Skanska USA Building, Inc.*, Civil Action No. 2:10-cv-02717) in U.S. District Court for the Western District of Tennessee after first attempting to reach a pre-litigation settlement through its conciliation process.

During litigation, Skanska asserted that it did not employ the sub-contracted buck hoist operators. The U.S. District Court for the Western District of Tennessee ruled in favor of Skanska, granting summary judgment. After the EEOC appealed, the U.S. Court of Appeals for the Sixth Circuit reversed the ruling and remanded the case. The Sixth Circuit acknowledged that it had not previously applied the joint employer theory in a Title VII case. According to the joint employer theory, two separate entities are considered to be joint employers if they share or co-determine essential terms and conditions of employment. The Sixth Circuit adopted the joint employer theory in the Title VII context and held that there was sufficient evidence to hold Skanska liable as a joint employer because Skanska supervised and controlled the day-to-day activities of the buck hoist operators.

Besides the $95,000 in monetary relief, the three-year consent decree settling the lawsuit enjoins Skanska from subjecting employees to racial harassment or retaliating against any employee who lodges a discrimination complaint. The consent decree also requires defendant to provide in-

person training on race discrimination and retaliation, maintain records of any complaints of racial harassment, and provide annual reports to the EEOC. Knox intervened in the EEOC's lawsuit and settled his claim separately for an undisclosed amount.

"Employees should not have to endure a racially hostile work environment to make a living," said Faye Williams, regional attorney for the EEOC's Memphis District Office, which serves Tennessee, Arkansas, and portions of Mississippi. "This case highlights the importance of companies providing training in the workplace on anti-discrimination laws for its employees."

According to company information, Skanska USA Building, Inc. is a building contractor with approximately 3,000 employees and 26 offices nationwide. Skanska acts as a general contractor for many construction sites, including the Methodist Le Bonheur Children's Hospital in Memphis, which was completed in 2010.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

5.1.9: Case Study: Skanska USA Building to Pay $95,000 to Settle EEOC Racial Harassment and Retaliation Lawsuit is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.1.10: Distribution of African American Population

African Americans in the United States are still heavily southern. Their distribution dates to the beginning of the United States and the forced importation of millions of Africans. Starting in the early twentieth century, many African Americans migrated out of this region, but most did not. In the last decades of the twentieth century and the beginning of the twenty-first, there has even been a reverse migration of African Americans back to Southern cities and suburbs.

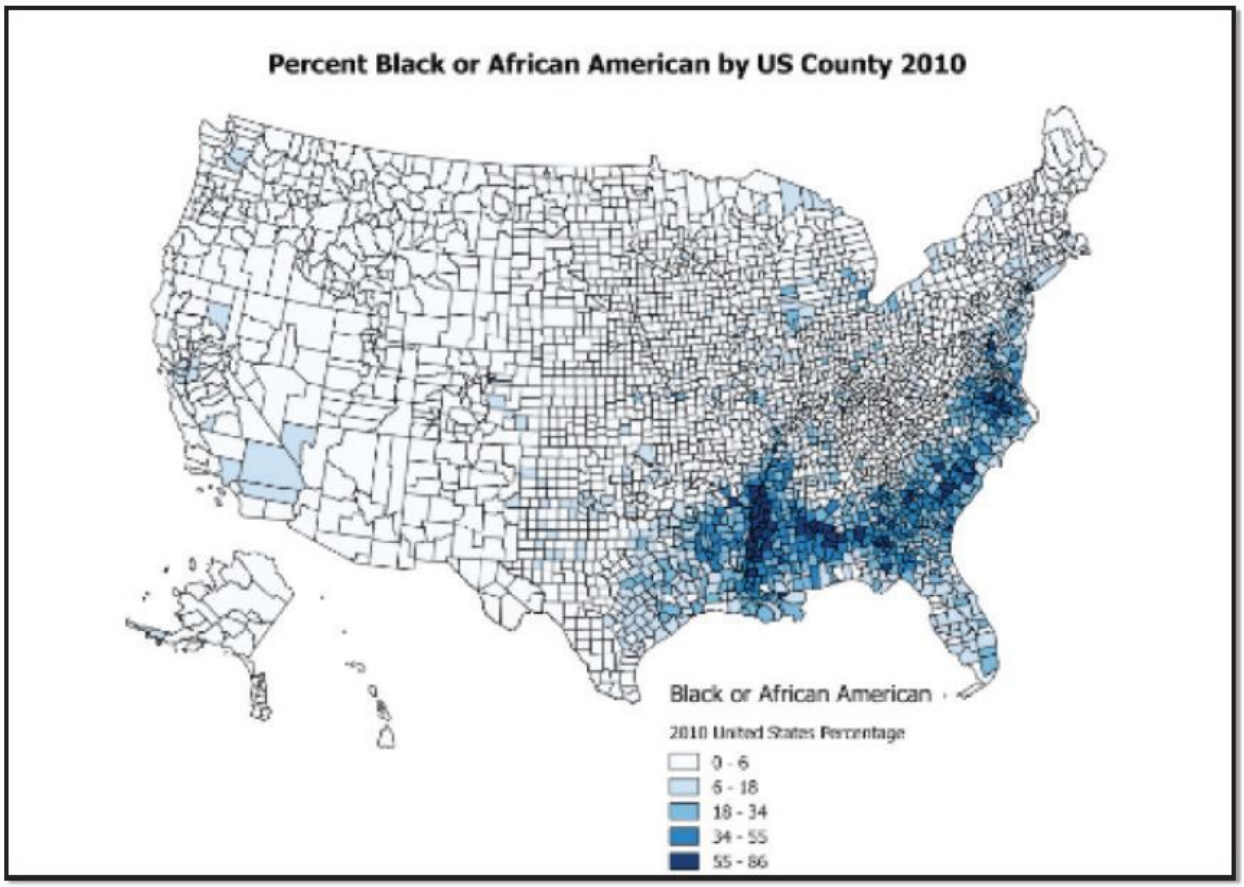
Percent Black or African American by US County 2010
Black or African American
2010 United States Percentage
0 - 6
6 - 18
18 - 34
34 - 55
55 - 86

Figure 5.1.10.1: The Distribution of the African American Population. Original work by David Dorrell licensed under CC BY SA 4.0.

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5.1.11: Case Study: Washington Group International To Pay $1.5 Million To Black Workers Who Were Racially Harassed

EEOC Settles Suit Against Global Employer in the Construction Industry

BOSTON - The U.S. Equal Employment Opportunity Commission (EEOC) today announced a litigation settlement with Washington Group International, Inc. (WGI) for $1.5 million dollars, as well as significant injunctive relief, on behalf of African American workers who were racially harassed and then retaliated against for complaining about it.

WGI is a provider of planning, engineering, design, construction, technical, management, and operations and maintenance services to public and private sector clients worldwide.

The EEOC charged in its lawsuit that WGI created a racially hostile work environment for black employees and failed to take appropriate action to remedy the discriminatory conduct at the Sithe Mystic Power Plant construction project in Everett, Mass. — which the company managed as general contractor from approximately December 2001 through June 2003. WGI not only subjected black employees to racial graffiti and other forms of harassment, the EEOC said, but retaliated against them for complaining.

Employers must remain vigilant in protecting all employees from racial harassment, especially in today's increasingly diverse labor force, said EEOC's New York District Director Spencer H. Lewis, Jr. In this case, rather than swiftly taking corrective action to remedy the racially hostile workplace, WGI targeted the victims for retaliatory measures, including termination.

The EEOC filed suit against WGI in 2004 under Title VII of the Civil Rights Act of 1964 (Case No. 04-12097-GAO in the U.S. District Court of Massachusetts). The consent decree resolving the case was submitted to U.S. District Court Magistrate Judge Marianne B. Bowler for approval.

Under the decree, WGI will pay $1.3 million to be shared among six African American former employees, and $200,000 will be apportioned among eleven similarly situated individuals identified during the litigation. Injunctive relief includes requiring WGI to conduct anti-discrimination training and implement an anti-graffiti policy; revise its equal employment opportunity policies and procedures; post a notice about the settlement for all Power Unit construction sites for the next two years; and monitoring by the EEOC for a period of two years.

R. Liliana Palacios-Baldwin, senior trial attorney in the EEOC's Boston Area Office, said: Even though a construction site may be viewed by some as a rough and tumble workplace, discrimination is unlawful regardless of the job site, it doesn't matter whether employees work behind a computer or behind a forklift.

On Feb. 28, 2007, EEOC Chair Naomi C. Earp launched the Commission's E-RACE Initiative (Eradicating Racism and Colorism from Employment), a national outreach, education, and enforcement campaign focusing on new and emerging race and color issues in the 21st-century workplace. Further information about the E-RACE Initiative is available on the EEOC's website at http://www.eeoc.gov/initiatives/e-race/index.html.

Washington Group International, Inc. is a provider of planning, engineering, design, construction, technical, management, and operations and maintenance services to public and private sector clients worldwide. Further information about Washington Group International, Inc. can be found on the company's website: http://www.wgint.com.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the agency is available on its website at www.eeoc.gov.

5.1.11: Case Study: Washington Group International To Pay $1.5 Million To Black Workers Who Were Racially Harassed is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.2.1: Spanish Exploration and Colonial Society

Learning Objectives

By the end of this section, you will be able to:

1. Identify the main Spanish American colonial settlements of the 1500s and 1600s
2. Discuss economic, political, and demographic similarities and differences between the Spanish colonies

Figure 5.2.1.1

During the 1500s, Spain expanded its colonial empire to the Philippines in the Far East and to areas in the Americas that later became the United States. The Spanish dreamed of mountains of gold and silver and imagined converting thousands of eager Native Americans to Catholicism. In their vision of colonial society, everyone would know his or her place. Patriarchy (the rule of men over family, society, and government) shaped the Spanish colonial world. Women occupied a lower status. In all matters, the Spanish held themselves to be atop the social pyramid, with Native peoples and Africans beneath them. Both Africans and native peoples, however, contested Spanish claims to dominance. Everywhere the Spanish settled, they brought devastating diseases, such as smallpox, that led to a horrific loss of life among native peoples. European diseases killed far more native inhabitants than did Spanish swords.

The world Native peoples had known before the coming of the Spanish was further upset by Spanish colonial practices. The Spanish imposed the *encomienda* system in the areas they controlled. Under this system, authorities assigned Native workers to mine and plantation owners with the understanding that the recipients would defend the colony and teach the workers the tenets of Christianity. In reality, the *encomienda* system exploited native workers. It was eventually replaced by another colonial labor system, the ***repartimiento***, which required Native towns to supply a pool of labor for Spanish overlords.

St. Augustine, Florida

Spain gained a foothold in present-day Florida, viewing that area and the lands to the north as a logical extension of their Caribbean empire. In 1513, Juan Ponce de León had claimed the area around today's St. Augustine for the Spanish crown, naming the land Pascua Florida (Feast of Flowers, or Easter) for the nearest feast day. Ponce de León was unable to establish a permanent settlement there, but by 1565, Spain was in need of an outpost to confront the French and English privateers using Florida as a base from which to attack treasure-laden Spanish ships heading from Cuba to Spain. The threat to Spanish interests took a new turn in 1562 when a group of French Protestants (Huguenots) established a small settlement they called Fort Caroline, north of St. Augustine. With the authorization of King Philip II, Spanish nobleman Pedro Menéndez led an attack on Fort Caroline, killing most of the colonists and destroying the fort. Eliminating Fort Caroline served dual purposes for the Spanish—it helped reduce the danger from French privateers and eradicated the French threat to Spain's claim to the area. The contest over Florida illustrates how European rivalries spilled over into the Americas, especially religious conflict between Catholics and Protestants.

In 1565, the victorious Menéndez founded St. Augustine, now the oldest European settlement in the Americas. In the process, the Spanish displaced the local **Timucua** Natives from their ancient town of Seloy, which had stood for thousands of years (Figure 5.2.1.2). The Timucua suffered greatly from diseases introduced by the Spanish, shrinking from a population of around 200,000 pre-contact to fifty thousand in 1590. By 1700, only one thousand Timucua remained. As in other areas of Spanish conquest, Catholic priests worked to bring about a spiritual conquest by forcing the surviving Timucua, demoralized and reeling from catastrophic losses of family and community, to convert to Catholicism.

Figure 5.2.1.2: In this drawing by French artist Jacques le Moyne de Morgues, Timucua flee the Spanish settlers, who arrive by ship. Le Moyne lived at Fort Caroline, the French outpost, before the Spanish destroyed the colony in 1562.

Spanish Florida made an inviting target for Spain's imperial rivals, especially the English, who wanted to gain access to the Caribbean. In 1586, Spanish settlers in St. Augustine discovered

their vulnerability to attack when the English pirate Sir Francis Drake destroyed the town with a fleet of twenty ships and one hundred men. Over the next several decades, the Spanish built more wooden forts, all of which were burnt by raiding European rivals. Between 1672 and 1695, the Spanish constructed a stone fort, Castillo de San Marcos, to better defend St. Augustine against challengers.

Figure 5.2.1.3: The Spanish fort of Castillo de San Marcos helped Spanish colonists in St. Augustine fend off marauding privateers from rival European countries.

CLICK AND EXPLORE

Browse the National Park Service's multimedia resources on Castillo de San Marcos to see how the fort and gates have looked throughout history.

Santa Fe, New Mexico

Farther west, the Spanish in Mexico, intent on expanding their empire, looked north to the land of the Pueblo Natives. Under orders from King Philip II, Juan de Oñate explored the American southwest for Spain in the late 1590s. The Spanish hoped that what we know as New Mexico would yield gold and silver, but the land produced little of value to them. In 1610, Spanish settlers established themselves at Santa Fe—originally named La Villa Real de la Santa Fe de San Francisco de Asís, or "Royal City of the Holy Faith of St. Francis of Assisi"—where many Pueblo villages were located. Santa Fe became the capital of the Kingdom of New Mexico, an outpost of the larger Spanish Viceroyalty of New Spain, which had its headquarters in Mexico City.

As they had in other Spanish colonies, Franciscan missionaries labored to bring about a spiritual conquest by converting the Pueblo to Catholicism. At first, the Pueblo adopted the parts of Catholicism that dovetailed with their own long-standing view of the world. However, Spanish priests insisted that natives discard their old ways entirely and angered the Pueblo by focusing on the young, drawing them away from their parents. This deep insult, combined with an extended period of drought and increased attacks by local Apache and Navajo in the 1670s—troubles that the Pueblo came to believe were linked to the Spanish presence—moved the Pueblo to push the

Spanish and their religion from the area. Pueblo leader Popé demanded a return to native ways so the hardships his people faced would end. To him and to thousands of others, it seemed obvious that “when Jesus came, the Corn Mothers went away.” The expulsion of the Spanish would bring a return to prosperity and a pure, native way of life.

In 1680, the Pueblo launched a coordinated rebellion against the Spanish. The Pueblo Revolt killed over four hundred Spaniards and drove the rest of the settlers, perhaps as many as two thousand, south toward Mexico. However, as droughts and attacks by rival tribes continued, the Spanish sensed an opportunity to regain their foothold. In 1692, they returned and reasserted their control of the area. Some of the Spanish explained the Pueblo success in 1680 as the work of the Devil. Satan, they believed, had stirred up the Pueblo to take arms against God’s chosen people—the Spanish—but the Spanish, and their God, had prevailed in the end.

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5.2.2: The Mexican-American War, 1846–1848

Learning Objectives

By the end of this section, you will be able to:

1. Identify the causes of the Mexican-American War
2. Describe the outcomes of the war in 1848, especially the Mexican Cession
3. Describe the effect of the California Gold Rush on westward expansion

Tensions between the United States and Mexico rapidly deteriorated in the 1840s as American expansionists eagerly eyed Mexican land to the west, including the lush northern Mexican province of California. Indeed, in 1842, a U.S. naval fleet, incorrectly believing war had broken out, seized Monterey, California, a part of Mexico. Monterey was returned the next day, but the episode only added to the uneasiness with which Mexico viewed its northern neighbor. The forces of expansion, however, could not be contained, and American voters elected James Polk in 1844 because he promised to deliver more lands. President Polk fulfilled his promise by gaining Oregon and, most spectacularly, provoking a war with Mexico that ultimately fulfilled the wildest fantasies of expansionists. By 1848, the United States encompassed much of North America, a republic that stretched from the Atlantic to the Pacific.

James K. Polk and the Triumph of Expansion

A fervent belief in expansion gripped the United States in the 1840s. In 1845, a New York newspaper editor, John O'Sullivan, introduced the concept of "manifest destiny" to describe the very popular idea of the special role of the United States in overspreading the continent—the divine right and duty of White Americans to seize and settle the American West, thus spreading Protestant, democratic values. In this climate of opinion, voters in 1844 elected James K. Polk, a slaveholder from Tennessee, because he vowed to annex Texas as a new slave state and take Oregon.

Annexing Oregon was an important objective for U.S. foreign policy because it appeared to be an area rich in commercial possibilities. Northerners favored U.S. control of Oregon because ports in the Pacific Northwest would be gateways for trade with Asia. Southerners hoped that, in exchange for their support of expansion into the northwest, northerners would not oppose plans for expansion into the southwest.

President Polk—whose campaign slogan in 1844 had been "Fifty-four forty or fight!"—asserted the United States' right to gain full control of what was known as Oregon Country, from its southern border at 42° latitude (the current boundary with California) to its northern border at 54° 40' latitude. According to an 1818 agreement, Great Britain and the United States held joint ownership of this territory, but the 1827 Treaty of Joint Occupation opened the land to settlement by both countries. Realizing that the British were not willing to cede all claims to the territory, Polk proposed the land be divided at 49° latitude (the current border between Washington and Canada). The British, however, denied U.S. claims to land north of the Columbia River (Oregon's current northern border). Indeed, the British foreign secretary refused even to relay Polk's proposal to London. However, reports of the difficulty Great Britain would face

defending Oregon in the event of a U.S. attack, combined with concerns over affairs at home and elsewhere in its empire, quickly changed the minds of the British, and in June 1846, Queen Victoria's government agreed to a division at the forty-ninth parallel.

Figure 5.2.2.1: This map of the Oregon territory during the period of joint occupation by the United States and Great Britain shows the area whose ownership was contested by the two powers.

In contrast to the diplomatic solution with Great Britain over Oregon, when it came to Mexico, Polk and the American people proved willing to use force to wrest more land for the United States. In keeping with voters' expectations, President Polk set his sights on the Mexican state of California. After the mistaken capture of Monterey, negotiations about purchasing the port of San Francisco from Mexico broke off until September 1845. Then, following a revolt in California that left it divided in two, Polk attempted to purchase Upper California and New Mexico as well. These efforts went nowhere. The Mexican government, angered by U.S. actions, refused to recognize the independence of Texas.

Finally, after nearly a decade of public clamoring for the annexation of Texas, in December 1845 Polk officially agreed to the annexation of the former Mexican state, making the Lone Star Republic an additional slave state. Incensed that the United States had annexed Texas, however, the Mexican government refused to discuss the matter of selling land to the United States. Indeed, Mexico refused even to acknowledge Polk's emissary, John Slidell, who had been sent to Mexico City to negotiate. Not to be deterred, Polk encouraged Thomas O. Larkin, the U.S. consul in Monterey, to assist any American settlers and any **Californios**, the Mexican residents

of the state, who wished to proclaim their independence from Mexico. By the end of 1845, having broken diplomatic ties with the United States over Texas and having grown alarmed by American actions in California, the Mexican government warily anticipated the next move. It did not have long to wait.

War With Mexico, 1846–1848

Expansionistic fervor propelled the United States to war against Mexico in 1846. The United States had long argued that the Rio Grande was the border between Mexico and the United States, and at the end of the Texas war for independence Santa Anna had been pressured to agree. Mexico, however, refused to be bound by Santa Anna's promises and insisted the border lay farther north, at the Nueces River. To set it at the Rio Grande would, in effect, allow the United States to control land it had never occupied. In Mexico's eyes, therefore, President Polk violated its sovereign territory when he ordered U.S. troops into the disputed lands in 1846. From the Mexican perspective, it appeared the United States had invaded their nation.

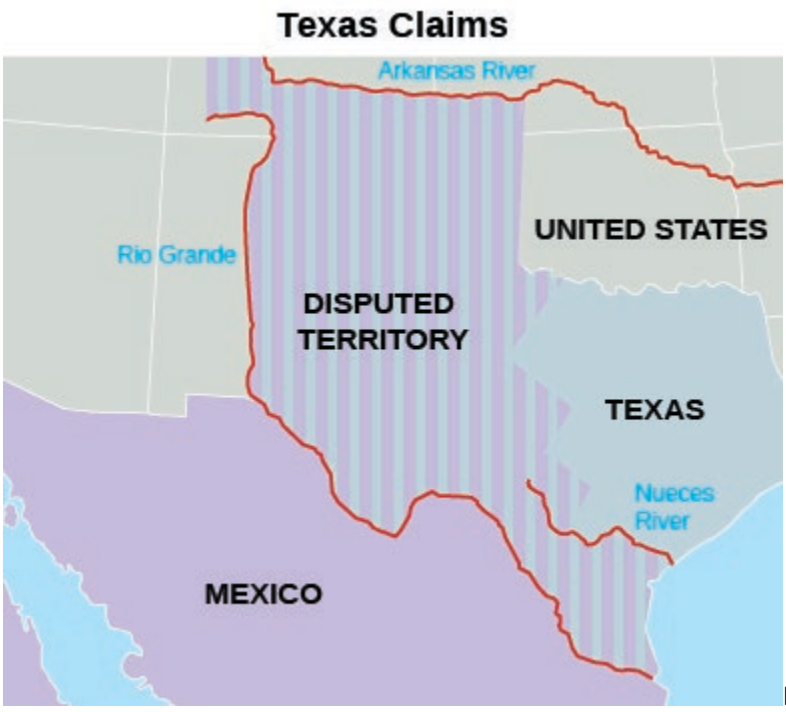

Figure 5.2.2.2: In 1845, when Texas joined the United States, Mexico insisted the United States had a right only to the territory northeast of the Nueces River. The United States argued in turn that it should have title to all land between the Nueces and the Rio Grande as well.

In January 1846, the U.S. force that was ordered to the banks of the Rio Grande to build a fort on the "American" side encountered a Mexican cavalry unit on patrol. Shots rang out, and sixteen U.S. soldiers were killed or wounded. Angrily declaring that Mexico "has invaded our territory and shed American blood upon American soil," President Polk demanded the United States declare war on Mexico. On May 12, Congress obliged.

The small but vocal antislavery faction decried the decision to go to war, arguing that Polk had deliberately provoked hostilities so the United States could annex more slave territory. Illinois representative Abraham Lincoln and other members of Congress issued the "Spot Resolutions" in which they demanded to know the precise spot on U.S. soil where American blood had been spilled. Many Whigs also denounced the war. Democrats, however, supported Polk's decision, and volunteers for the army came forward in droves from every part of the country except New England, the seat of abolitionist activity. Enthusiasm for the war was aided by the widely held belief that Mexico was a weak, impoverished country and that the Mexican people, perceived as ignorant, lazy, and controlled by a corrupt Roman Catholic clergy, would be easy to defeat.

Figure 5.2.2.3: Anti-Catholic sentiment played an important role in the Mexican-American War. The American public widely regarded Roman Catholics as cowardly and vice-ridden, like the clergy in this ca. 1846 lithograph who are shown fleeing the Mexican town of Matamoros accompanied by pretty women and baskets full of alcohol. (credit: Library of Congress)

U.S. military strategy had three main objectives: 1) Take control of northern Mexico, including New Mexico; 2) seize California; and 3) capture Mexico City. General Zachary Taylor and his Army of the Center were assigned to accomplish the first goal, and with superior weapons they soon captured the Mexican city of Monterrey. Taylor quickly became a hero in the eyes of the American people, and Polk appointed him commander of all U.S. forces.

General Stephen Watts Kearny, commander of the Army of the West, accepted the surrender of Santa Fe, New Mexico, and moved on to take control of California, leaving Colonel Sterling Price in command. Despite Kearny's assurances that New Mexicans need not fear for their lives or their property, the region's residents rose in revolt in January 1847 in an effort to drive the Americans away. Although Price managed to put an end to the rebellion, tensions remained high.

Kearny, meanwhile, arrived in California to find it already in American hands through the joint efforts of California settlers, U.S. naval commander John D. Sloat, and John C. Fremont, a

former army captain and son-in-law of Missouri senator Thomas Benton. Sloat, at anchor off the coast of Mazatlan, learned that war had begun and quickly set sail for California. He seized the town of Monterey in July 1846, less than a month after a group of American settlers led by William B. Ide had taken control of Sonoma and declared California a republic. A week after the fall of Monterey, the navy took San Francisco with no resistance. Although some Californios staged a short-lived rebellion in September 1846, many others submitted to the U.S. takeover. Thus Kearny had little to do other than take command of California as its governor.

Leading the Army of the South was General Winfield Scott. Both Taylor and Scott were potential competitors for the presidency, and believing—correctly—that whoever seized Mexico City would become a hero, Polk assigned Scott the campaign to avoid elevating the more popular Taylor, who was affectionately known as "Old Rough and Ready."

Scott captured Veracruz in March 1847, and moving in a northwesterly direction from there (much as Spanish conquistador Hernán Cortés had done in 1519), he slowly closed in on the capital. Every step of the way was a hard-fought victory, however, and Mexican soldiers and civilians both fought bravely to save their land from the American invaders. Mexico City's defenders, including young military cadets, fought to the end. According to legend, cadet Juan Escutia's last act was to save the Mexican flag, and he leapt from the city's walls with it wrapped around his body. On September 14, 1847, Scott entered Mexico City's central plaza; the city had fallen. While Polk and other expansionists called for "all Mexico," the Mexican government and the United States negotiated for peace in 1848, resulting in the Treaty of Guadalupe Hidalgo.

Figure 5.2.2.4: In *General Scott's Entrance into Mexico* (1851), Carl Nebel depicts General Winfield Scott on a white horse entering Mexico City's Plaza de la Constitución as anxious residents of the city watch. One woman peers furtively from behind the curtain of an upstairs window. On the left, a man bends down to pick up a paving stone to throw at the invaders.

The Treaty of Guadalupe Hidalgo, signed in February 1848, was a triumph for American expansion under which Mexico ceded nearly half its land to the United States. The **Mexican**

Cession, as the conquest of land west of the Rio Grande was called, included the current states of California, New Mexico, Arizona, Nevada, Utah, and portions of Colorado and Wyoming. Mexico also recognized the Rio Grande as the border with the United States. The United States promised to grant Mexican citizens in the ceded territory U.S. citizenship in the future when the territories they were living in became states, and promised to recognize the Spanish land grants to the Pueblos in New Mexico. In exchange, the United States agreed to assume $3.35 million worth of Mexican debts owed to U.S. citizens, paid Mexico $15 million for the loss of its land, and promised to guard the residents of the Mexican Cession from Native American raids.

As extensive as the Mexican Cession was, some argued the United States should not be satisfied until it had taken all of Mexico. Many who were opposed to this idea were southerners who, while desiring the annexation of more slave territory, did not want to make Mexico's large mestizo (people of mixed Native American and European ancestry) population part of the United States. Others did not want to absorb a large group of Roman Catholics. These expansionists could not accept the idea of new U.S. territory filled with mixed-race, Catholic populations.

CLICK AND EXPLORE

Explore the U.S.-Mexican War at PBS to read about life in the Mexican and U.S. armies during the war and to learn more about the various battles.

California and the Gold Rush

The United States had no way of knowing that part of the land about to be ceded by Mexico had just become far more valuable than anyone could have imagined. On January 24, 1848, James Marshall discovered gold in the millrace of the sawmill he had built with his partner John Sutter on the south fork of California's American River. Word quickly spread, and within a few weeks all of Sutter's employees had left to search for gold. When the news reached San Francisco, most of its inhabitants abandoned the town and headed for the American River. By the end of the year, thousands of California's residents had gone north to the gold fields with visions of wealth dancing in their heads, and in 1849 thousands of people from around the world followed them. The Gold Rush had begun.

Figure 5.2.2.5: Word about the discovery of gold in California in 1848 quickly spread and thousands soon made their way to the West Coast in search of quick riches.

The fantasy of instant wealth induced a mass exodus to California. Settlers in Oregon and Utah rushed to the American River. Easterners sailed around the southern tip of South America or to Panama's Atlantic coast, where they crossed the Isthmus of Panama to the Pacific and booked ship's passage for San Francisco. As California-bound vessels stopped in South American ports to take on food and fresh water, hundreds of Peruvians and Chileans streamed aboard. Easterners who could not afford to sail to California crossed the continent on foot, on horseback, or in wagons. Others journeyed from as far away as Hawaii and Europe. Chinese people came as well, adding to the polyglot population in the California boomtowns.

Figure 5.2.2.6: This Currier & Ives lithograph from 1849 imagines the extreme lengths that people might go to in order to be part of the California Gold Rush. In addition to the men with picks and shovels trying to reach the ship from the dock, airships and rocket are shown flying overhead. (credit: Library of Congress)

Once in California, gathered in camps with names like Drunkard's Bar, Angel's Camp, Gouge Eye, and Whiskeytown, the "**forty-niners**" did not find wealth so easy to come by as they had first imagined. Although some were able to find gold by panning for it or shoveling soil from river bottoms into sieve-like contraptions called rockers, most did not. The placer gold, the gold that had been washed down the mountains into streams and rivers, was quickly exhausted, and what remained was deep below ground. Independent miners were supplanted by companies that could afford not only to purchase hydraulic mining technology but also to hire laborers to work the hills. The frustration of many a miner was expressed in the words of Sullivan Osborne. In 1857, Osborne wrote that he had arrived in California "full of high hopes and bright anticipations of the future" only to find his dreams "have long since perished." Although $550 million worth of gold was found in California between 1849 and 1850, very little of it went to individuals.

Observers in the gold fields also reported abuse of Native Americans by miners. Some miners forced Native Americans to work their claims for them; others drove them off their lands, stole from them, and even murdered them as part of a systemic campaign of extermination. Some scholars view the resulting loss of Native American life as a clear example of genocide in the United States. Foreigners were generally disliked, especially those from South America. The most despised, however, were the thousands of Chinese migrants. Eager to earn money to send to their families in Hong Kong and southern China, they quickly earned a reputation as frugal men and hard workers who routinely took over diggings others had abandoned as worthless and worked them until every scrap of gold had been found. Many American miners, often spendthrifts, resented their presence and discriminated against them, believing the Chinese, who represented about 8 percent of the nearly 300,000 who arrived, were depriving them of the opportunity to make a living.

CLICK AND EXPLORE

Visit The Chinese in California to learn more about the experience of Chinese migrants who came to California in the Gold Rush era.

In 1850, California imposed a tax on foreign miners, and in 1858 it prohibited all immigration from China. Those Chinese who remained in the face of the growing hostility were often beaten and killed, and some Westerners made a sport of cutting off Chinese men's queues, the long braids of hair worn down their backs. In 1882, Congress took up the power to restrict immigration by banning the further immigration of Chinese.

Figure 5.2.2.7: "Pacific Chivalry: Encouragement to Chinese Immigration," which appeared in *Harper's Weekly* in 1869, depicts a White man attacking a Chinese man with a whip as he holds him by the queue. Americans sometimes forcefully cut off the queues of Chinese immigrants. This could have serious consequences for the victim. Until 1911, all Chinese men were required by their nation's law to wear the queue as a sign of loyalty. Miners returning to China without it could be put to death. (credit: Library of Congress)

As people flocked to California in 1849, the population of the new territory swelled from a few thousand to about 100,000. The new arrivals quickly organized themselves into communities, and the trappings of "civilized" life—stores, saloons, libraries, stage lines, and fraternal lodges—began to appear. Newspapers were established, and musicians, singers, and acting companies arrived to entertain the gold seekers. The epitome of these Gold Rush boomtowns was San Francisco, which counted only a few hundred residents in 1846 but by 1850 had reached a population of thirty-four thousand. So quickly did the territory grow that by 1850 California was ready to enter the Union as a state. When it sought admission, however, the issue of slavery expansion and sectional tensions emerged once again.

Figure 5.2.2.8: This daguerreotype shows the bustling port of San Francisco in January 1851, just a few months after San Francisco became part of the new U.S. state of California. (credit: Library of Congress)

5.2.2: The Mexican-American War, 1846–1848 is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.2.3: Hispanic Origin

Hispanic origin can be viewed as the heritage, nationality, lineage, or country of birth of the person or the person's parents or ancestors before arriving in the United States. People who identify as Hispanic, Latino, or Spanish may be of any race.

- 2019 Hispanic CPS Tables
- 2010 Hispanic Publication
- 2014 Hispanic Working Paper

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5.2.4: Distribution of Hispanics Population

Many of the states with large Hispanic populations were states taken from Mexico by the United States in the Mexican American War. In some ways, these places didn't come to the United States, the United States came to them. Certainly, a pattern is apparent. Generally, the parts of the U.S. closest to Mexico or the Caribbean are the most Hispanic. There are other areas with high Hispanic populations. These places have been attractive to immigrants for their employment prospects.

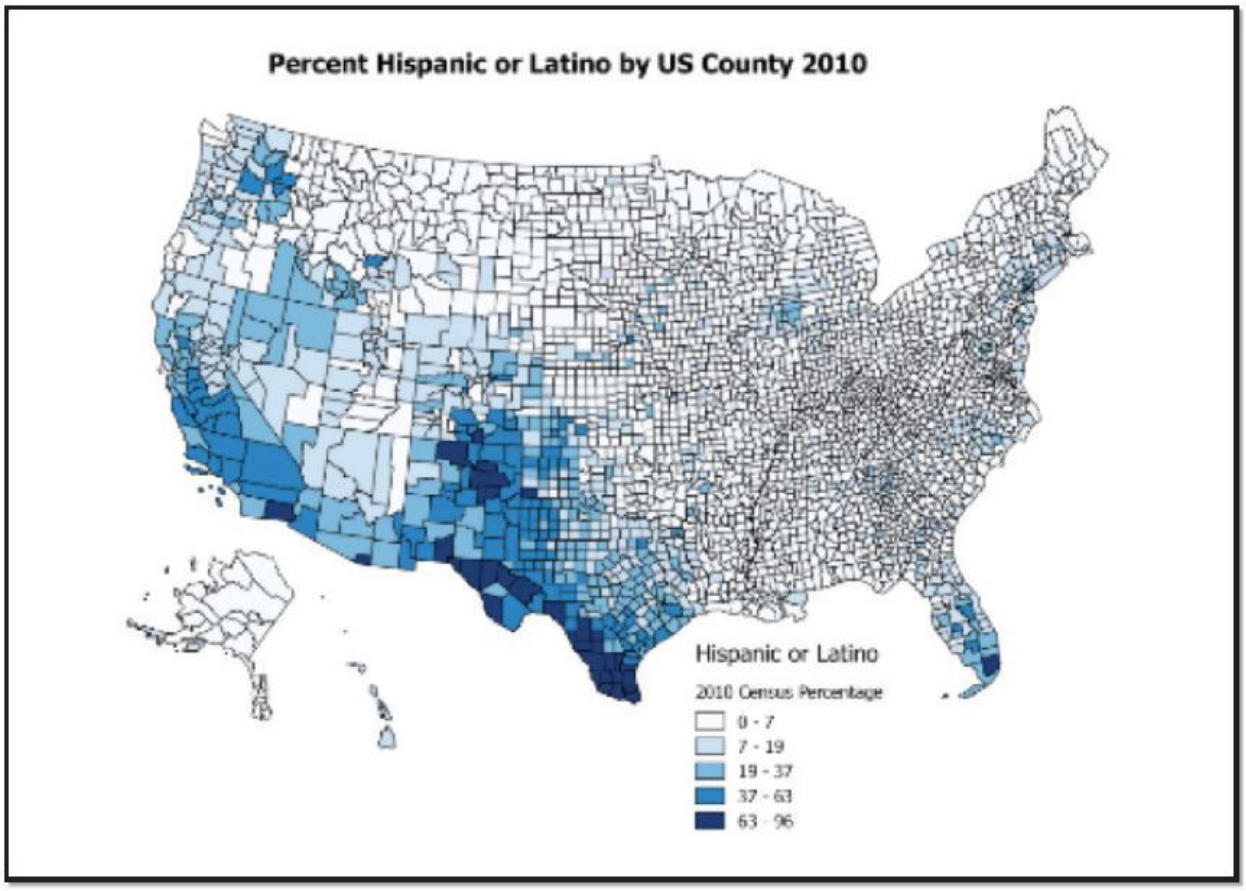

Figure \(\PageIndex{1}\): The Distribution of the Hispanic Population. Original work by David Dorrell is licensed under CC BY SA 4.0.

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5.2.5: Video: Simple, Effective Tech to Connect Communities in Crisis

The world is more connected than ever, but some communities are still cut off from vital resources like electricity and health care. In this solution-oriented talk, activist Johanna Figueira discusses her work with Code for Venezuela—a platform that gathers technologists to address Venezuela's needs for information and medical supplies—and shares ideas for how it could be used as a model to help other communities in need.

https://www.youtube.com/watch?v=Mm-_QZ_tf0s

5.2.5: Video: Simple, Effective Tech to Connect Communities in Crisis is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.2.6: Video: What's Missing from the American Immigrant Narrative

Recounting her story of finding opportunity and stability in the US, Elizabeth Camarillo Gutierrez examines the flaws in narratives that simplify and idealize the immigrant experience—and shares hard-earned wisdom on the best way to help those around us. "Our world is one that flourishes when different voices come together," she says.

https://www.youtube.com/watch?v=FVUkKKc3Vvk

5.2.6: Video: What's Missing from the American Immigrant Narrative is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.2.7: Case Study: EEOC Sues Helados La Tapatia for Hispanic-Preference Hiring

Non-Hispanic Applicants Turned Away From Entry-Level Positions, Federal Agency Charges

FRESNO – Helados La Tapatia, Inc., violated federal law when they failed to hire non-Hispanic applicants for entry-level positions because of their race/national origin, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

According to EEOC's lawsuit, the Fresno, California-based company favored less-qualified Hispanic job applicants over all other applicants of a different race or national origin (including black, white and Asian applicants) in entry-level positions, such as Route Sales Driver. EEOC further contends that Helados not only failed to hire, but also discouraged and deterred non-Hispanic applicants from applying.

Such alleged conduct viol,ates Title VII of the Civil Rights Act of 1964. EEOC filed its suit against the company in U.S. District Court for the Eastern District of California (EEOC v. Helados La Tapatia, Inc., et al., Case No. 1:20-cv-00722-DAD-JDP) after first attempting to reach a pre-litigation settlement through its conciliation process. EEOC's suit seeks back pay, benefits, and compensatory and punitive damages for a class of non-Hispanic applicants, as well as injunctive relief intended to prevent further discrimination by Helados.

"EEOC's core mission is to ensure equal employment opportunity for all," said Anna Park, regional attorney for EEOC's Los Angeles District Office, whose jurisdiction includes Fresno County.

Melissa Barrios, director of EEOC's Fresno Local Office, added, "Employers must be aware of their responsibility under the law to provide employment opportunities to everyone, regardless of race or national origin."

According to its website, www.heladoslatapatia.com, Helados produces Mexican-style desserts such as frozen fruit bars and ice cream products.

Individuals who know about Helados' hiring practices or who believe that they were not hired by the company because of his or her race/national origin, can contact the EEOC at (855) 725-4456 for more information.

Eliminating barriers in recruitment and hiring, especially class-based recruitment and hiring practices that discriminate against racial, ethnic, and religious groups, older workers, women, and people with disabilities, is one of six national priorities identified by the Commission's Strategic Enforcement Plan (SEP).

EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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5.2.8: Case Study: Dunnewood Vineyards Sued by EEOC for Harassment of Latino Workers

U.S.-Born Latino Supervisor Targeted Mexican-Born Employees, Agency Charges

SAN FRANCISCO — Ukiah winery Dunnewood Vineyard, owned by Constellation Brands (NYSE: STZ and STZ.B), violated federal law for tolerating discrimination against its Mexican-born workers, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

The EEOC's suit asserts that a supervisor at Dunnewood Vineyard regularly harassed winery worker Julio Perez-Lombera and other Mexican-born co-workers, telling them to go back to Mexico and calling them "wetbacks" and "beaners" on a daily basis. Although the supervisor was also Latino, he was born in the U.S., whereas the workers he harassed were born in Mexico. According to the EEOC, Dunnewood retaliated against Perez-Lombera when he reported the verbal attacks, ultimately leading to the loss of his job.

Harassment based on national origin and retaliation violates Title VII of the Civil Rights Act of 1964. After first attempting to reach a pre-litigation settlement through conciliation, the EEOC filed the lawsuit (*EEOC v. Constellation Brands, Inc., dba Dunnewood Vineyards*, Civil No. CV11-4437-DMR) in U.S. District Court for the Northern District of California, seeking monetary damages on behalf of the workers, training on anti-discrimination laws, posting of notices at the worksite and other measures to prevent future discrimination.

"It's hard to understand why a member of one group would harass members of the same group on the basis of their national origin, but, sadly, there's all kinds of discrimination in too many workplaces," said EEOC San Francisco District Director Michael Baldonado. "Fortunately, the law prohibits harassment due to national origin, plainly and simply, regardless of the race, national origin or gender of the harasser or victims."

EEOC San Francisco Regional Attorney William R. Tamayo pointed out that more than a third of all cases seen by the agency involve retaliation, and that, for the first time ever, retaliation under all statutes (36,258) surpassed race (35,890) as the most frequently filed charge at the EEOC in the fiscal year 2010.

Tamayo said, "Employers who try to solve a harassment problem by getting rid of the people who speak out about it will only add to that statistic. We hope this lawsuit will remind employers of their legal obligation to respond properly to complaints about harassment or discrimination, with timely investigation and steps to end any misconduct found."

Dunnewood Vineyards is owned and operated by Constellation Brands, Inc., an S&P 500 Index and Fortune 1000 company. According to company information, as one of the world's largest wine and alcohol beverage companies, Constellation operates approximately 30 wineries/facilities, employs about 4,300 workers, and distributes products in 125 countries.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

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5.2.9: Case Study: Champion Fiberglass Sued by EEOC for Systemic Race and National Origin Discrimination

Federal Agency Charges Local Company Engaged in Practices That Unlawfully Discriminated Against Non-Hispanic Applicants

HOUSTON - Champion Fiberglass, Inc., a Houston-area manufacturing company, violated federal anti-discrimination laws by engaging in systemic discrimination against non-Hispanic applicants, according to a lawsuit filed by the Equal Employment Opportunity Commission (EEOC) today. The lawsuit charges that a class of non-Hispanic applicants for employment were not hired or even considered for employment by Champion because of their race and/or national origin.

According to the lawsuit, Champion engaged in a pattern or practice of intentionally failing to hire non-Hispanic applicants and job seekers for laborer positions. The EEOC also maintains that Champion maintained a preference that its laborers speak Spanish, which violated Title VII because it had a disparate impact on non-Hispanic applicants.

The EEOC also alleges that Champion's word-of-mouth recruiting had an adverse impact on non-Hispanic applicants and job seekers. The EEOC maintains that Champion's illegal policies and practices resulted in an almost exclusively Hispanic laborer workforce within the company.

Such alleged conduct violates violated Title VII of the Civil Rights Act of 1964. The EEOC filed suit (Civil Action No. 4:17-cv-02226) in U.S. District Court for the Southern District of Texas, Houston Division, after first attempting to reach a voluntary pre-litigation settlement through its conciliation process. The EEOC seeks an injunction prohibiting such actions in the future, as well as back pay with pre-judgment interest, and compensatory and punitive damages in amounts to be determined at trial.

"Refusing to hire or even consider an applicant or job seeker for a laborer position because of his or her race or national origin unlawfully and unconscionably deprives people of equal opportunities within the workplace," said Rayford O. Irvin, district director of the EEOC's Houston District Office.

Rudy L. Sustaita, the EEOC's regional attorney in Houston, explained, "Title VII prohibits an employer from relying on non-job related criteria that it knows will exclude persons because of their race or national origin. The EEOC will defend victims of this sort of discrimination."

The EEOC's senior trial attorney in charge of the case, Connie Gatlin, added, "By refusing to permit job seekers who do not speak Spanish to even apply for a position, without a valid, justifiable reason for doing so, an employer engages in discriminatory practices that violate Title VII."

Champion Fiberglas manufactures fiberglass conduit, struts, and hangers for the industrial, electrical, and mechanical markets.

The EEOC's Houston District Office is located on the sixth floor of the Leland Federal Building at 1919 Smith St. in Houston.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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5.2.10: Case Study: ABM Industries Settles EEOC Sexual Harassment Suit For $5.8 Million

Class of Hispanic Janitorial Workers Sexually Harassed, One Raped by Supervisor, Federal Agency Charged

LOS ANGELES — ABM Industries, Inc., along with two subsidiaries, ABM Janitorial Services, Inc. and ABM Janitorial Services Northern California, Inc. will pay $5.8 million and provide other relief to a class of 21 Hispanic female janitorial workers, settling an egregious sexual harassment lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

The sexual harassment began around 2001, with the most severe forms involving sexual assaults of some women beginning in 2005 throughout California's Central Valley region, according to the EEOC's suit. The EEOC asserted that the 21 class members were victims of varying degrees of unwelcome touching, explicit sexual comments and requests for sex by 14 male co-workers and supervisors, one of whom was a registered sex offender. Some of the harassers allegedly often exposed themselves, groped female employees' private parts from behind, and even raped at least one of the victims, the EEOC said. The EEOC's suit charged that ABM failed to respond to the employees' repeated complaints of harassment, which made for a dangerous and sexually hostile work environment. Many of the harassers continued to work despite the complaints.

The EEOC filed suit against ABM in 2007 in the U.S. District Court for the Eastern District of California (U.S. EEOC v. ABM Industries, Inc. and ABM Janitorial Services, Inc., et al., Case No. 1:07 CV 01428 LJO JLT), arguing that the conduct was a direct violation of Title VII of the Civil Rights Act of 1964, as amended (Title VII), which prohibits gender discrimination in employment, including sexual harassment.

"Despite progress, sexual harassment remains a significant problem for our nation's workforce," said EEOC Chair Jacqueline A. Berrien. "The EEOC takes very seriously its obligation to obtain redress for employees who are victims of these egregious practices. This settlement serves as a reminder to employers that they must remain vigilant in preventing and remedying harassment in their workplace."

Aside from the monetary relief, the three-year consent decree settling the suit requires ABM to:

- Designate an outside equal employment opportunity monitor to ensure the effectiveness of ABM's investigations, complaint policies, and procedures, and assist in anti-harass¬ment training to employees;
- Ensure that investigators of harassment complaints are trained thoroughly to investigate internal complaints of discrimination, harassment, and retaliation;
- Establish a toll-free telephone hotline to receive complaints of harassment and retaliation;
- Provide anti-harassment training to its employees in both English and Spanish to include a video message from the chief executive officer emphasizing zero tolerance for harassment and retaliation;
- Conduct internal compliance audits at worksites;

- Closely track any future discrimination complaints to conform to its obligations under Title VII;
- Provide periodic annual reports to the EEOC regarding its employment practices; and
- Ensure that employees are not subjected to harassment and retaliation.

"All I wanted was to do my job," said class member Maria Quintero. "I never dreamed that I would be exposed to so much abuse at work. I complained several times about the abuse I suffered and saw, and they did nothing. I am relieved to know that ABM will make changes to make sure that no one else has to suffer as we did."

Anna Park, regional attorney for the EEOC's Los Angeles District Office, said, "We commend ABM for addressing what we found to be a grave and ominous situation for its female staff. Employers must implement strict policies and procedures to safeguard against such harassment, and take employee complaints seriously so that they not rise to the level of severity we saw in this case."

Melissa Barrios, local director for the EEOC's Fresno Local Office, added, "The EEOC is an avenue for workers who suffer sexual abuse and harassment on the job. Workers have the right to file complaints against employers that fail to protect them against such behavior—and without the threat of retaliation."

According to ABM's website, www.abm.com, ABM Janitorial Services is a Fortune 1000 provider of commercial cleaning services, operating in branches nationwide.

The EEOC is the federal agency that enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on the agency's website at www.eeoc.gov.

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5.2.11: Case Study: Mercury Air Centers To Pay $600,000 For National Origin, Race And Sex Harassment In EEOC Suit

Salvadoran Airport Employee Was Promoted Despite Harassment of Filipino, Guatemalan and Mexican Male Workers, Federal Agency Charged

LOS ANGELES – Aircraft services provider Mercury Air Centers, Inc., will pay $600,000 and furnish other relief to settle a national origin, race, and sex harassment lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

The EEOC originally filed suit against Mercury Air Centers in September 2008 in the U.S. District Court for the Central District of California (*EEOC v. Mercury Air Centers, Inc.,* CV-08-06332-AHM(Ex)), alleging that the harassment violated Title VII of the Civil Rights Act of 1964. Since the filing of the lawsuit, Mercury Air Centers was sold and became a part of Atlantic Services, Inc. Atlantic Services then worked with the EEOC in an effort to resolve the lawsuit.

According to the EEOC, the seven victims – including one Filipino male and six Hispanic males – endured a barrage of harassing comments on the part of a Salvadoran male co-worker at the Bob Hope Airport facility in Burbank, Calif., since at least 2004. The EEOC claims that a Filipino line technician was regularly referred to as a "chink," "chino," and "stupid Chinese," and subjected to offensive statements about Filipinos. The alleged harasser derided the Guatemalan victims with derogatory remarks regarding their national origin, including references to them as "stupid Guatemaltecos" and stating that Guatemalans are useless and inferior to Salvadorans. Prior to learning the actual national origin of one of the Guatemalan victims, the alleged harasser also called him a "stupid Mexican."

The EEOC contends that the alleged harasser also repeatedly hurled offensive racial and sexual remarks toward the claimants and at least two African-American employees, which included usage of the N-word and requests for sexual favors. The alleged harasser grabbed his genitals in their presence and engaged in unwanted sexual touching. Despite complaints regarding his inappropriate behavior, Mercury Air Centers' management officials failed to fully investigate or address the alleged harassment, says the EEOC. In fact, the alleged harasser was instead promoted to a supervisory position.

The settlement includes total monetary relief of $600,000 to be paid to at least seven employees along with a group of unidentified class members. The company also agreed to a two-year consent decree that calls for the appointment of an equal employment opportunity (EEO) officer to ensure compliance with anti-discrimination laws, along with an anti-discrimination policy, training, procedures, and reporting requirements to the EEOC.

"We commend Atlantic Services for taking steps to rectify the hostile work environment that persisted at Mercury Air Centers," said Anna Park, regional attorney of the EEOC's Los Angeles District Office. "Employers must properly heed warnings about harassing activity at the outset, so that it does not permeate throughout the rest of the working environment. Rewarding bad behavior simply sends out the wrong message to employees."

Olophius E. Perry, district director of the EEOC's Los Angeles District Office, added, "As the American workforce becomes increasingly more diverse, the potential for inter-minority and same-sex discrimination also rises. Employers must be mindful not to downplay such forms of discrimination, which can be just as demoralizing to the workforce as more traditional civil rights violations."

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

5.2.11: Case Study: Mercury Air Centers To Pay $600,000 For National Origin, Race And Sex Harassment In EEOC Suit is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.3.1: The Impact of Expansion on Chinese Immigrants

Learning Objectives

By the end of this section, you will be able to:

1. Describe the treatment of Chinese immigrants and Hispanic citizens during the westward expansion of the nineteenth century

As White Americans pushed west, they not only collided with Native American tribes but also with Hispanic Americans and Chinese immigrants. Hispanics in the Southwest had the opportunity to become American citizens at the end of the Mexican-American war, but their status was markedly second-class. Chinese immigrants arrived en masse during the California Gold Rush and numbered in the hundreds of thousands by the late 1800s, with the majority living in California, working menial jobs. These distinct cultural and ethnic groups strove to maintain their rights and way of life in the face of persistent racism and entitlement. But the large number of White settlers and government-sanctioned land acquisitions left them at a profound disadvantage. Ultimately, both groups withdrew into homogenous communities in which their language and culture could survive.

Chinese Immigrants in the American West

The initial arrival of Chinese immigrants to the United States began as a slow trickle in the 1820s, with barely 650 living in the U.S. by the end of 1849. However, as gold rush fever swept the country, Chinese immigrants, too, were attracted to the notion of quick fortunes. By 1852, over 25,000 Chinese immigrants had arrived, and by 1880, over 300,000 Chinese lived in the United States, most in California. While they had dreams of finding gold, many instead found employment building the first transcontinental railroad. Some even traveled as far east as the former cotton plantations of the Old South, which they helped to farm after the Civil War. Several thousand of these immigrants booked their passage to the United States using a "credit-ticket," in which their passage was paid in advance by American businessmen to whom the immigrants were then indebted for a period of work. Most arrivals were men: Few wives or children ever traveled to the United States. As late as 1890, less than 5 percent of the Chinese population in the U.S. was female. Regardless of gender, few Chinese immigrants intended to stay permanently in the United States, although many were reluctantly forced to do so, as they lacked the financial resources to return home.

Figure \(\PageIndex{1}\): Building the railroads was dangerous and backbreaking work. On the western railroad line, Chinese migrants, along with other non-White workers, were often given the most difficult and dangerous jobs of all.

Prohibited by law since 1790 from obtaining U.S. citizenship through naturalization, Chinese immigrants faced harsh discrimination and violence from American settlers in the West. Despite hardships like the special tax that Chinese miners had to pay to take part in the Gold Rush, or their subsequent forced relocation into Chinese districts, these immigrants continued to arrive in the United States seeking a better life for the families they left behind. Only when the Chinese Exclusion Act of 1882 forbade further immigration from China for a ten-year period did the flow stop.

The Chinese community banded together in an effort to create social and cultural centers in cities such as San Francisco. In a haphazard fashion, they sought to provide services ranging from social aid to education, places of worship, health facilities, and more to their fellow Chinese immigrants. As Chinese workers began competing with White Americans for jobs in California cities, the latter began a system of built-in discrimination. In the 1870s, White Americans formed "anti-coolie clubs" ("coolie" being a racial slur directed towards people of any Asian descent), through which they organized boycotts of Chinese-produced products and lobbied for anti-Chinese laws. Some protests turned violent, as in 1885 in Rock Springs, Wyoming, where tensions between White and Chinese immigrant miners erupted in a riot, resulting in over two dozen Chinese immigrants being murdered and many more injured.

Slowly, racism and discrimination became law. The new California constitution of 1879 denied naturalized Chinese citizens the right to vote or hold state employment. Additionally, in 1882, the U.S. Congress passed the Chinese Exclusion Act, which forbade further Chinese immigration into the United States for ten years. The ban was later extended on multiple occasions until its repeal in 1943. Eventually, some Chinese immigrants returned to China. Those who remained were stuck in the lowest-paying, most menial jobs. Several found assistance through the creation of benevolent associations designed to both support Chinese communities and defend them against political and legal discrimination; however, the history of Chinese immigrants to the United States remained largely one of deprivation and hardship well into the twentieth century.

CLICK AND EXPLORE

The Central Pacific Railroad Photographic History Museum provides a context for the role of the Chinese who helped build the railroads. What does the site celebrate, and what, if anything, does it condemn?

DEFINING AMERICAN

The Backs that Built the Railroad

Below is a description of the construction of the railroad in 1867. Note the way it describes the scene, the laborers, and the effort.

The cars now (1867) run nearly to the summit of the Sierras. . . . four thousand laborers were at work—one-tenth Irish, the rest Chinese. They were a great army laying siege to Nature in her strongest citadel. The rugged mountains looked like stupendous ant-hills. They swarmed with Celestials, shoveling, wheeling, carting, drilling, and blasting rocks and earth, while their dull, moony eyes stared out from under immense basket hats, like umbrellas. At several dining camps we saw hundreds sitting on the ground, eating soft boiled rice with chopsticks as fast as terrestrials could with soup ladles. Irish laborers received thirty dollars per month (gold) and board; Chinese, thirty-one dollars, boarding themselves. After a little experience, the latter were quite as efficient and far less troublesome.

—Albert D. Richardson, *Beyond the Mississippi*

Several great American advancements of the nineteenth century were built with the hands of many other nations. It is interesting to ponder how much these immigrant communities felt they were building their own fortunes and futures, versus the fortunes of others. Is it likely that the Chinese laborers, many of whom died due to the harsh conditions, considered themselves part of "a great army"? Certainly, this account reveals the unwitting racism of the day, where workers were grouped together by their ethnicity, and each ethnic group was labeled monolithically as "good workers" or "troublesome," with no regard for individual differences among the hundreds of Chinese or Irish workers.

Hispanic Americans in the American West

The Treaty of Guadalupe Hidalgo, which ended the Mexican-American War in 1848, promised U.S. citizenship to the nearly seventy-five thousand Hispanics now living in the American Southwest; approximately 90 percent accepted the offer and chose to stay in the United States despite their immediate relegation to second-class citizenship status. Relative to the rest of Mexico, these lands were sparsely populated and had been so ever since the country achieved its freedom from Spain in 1821. In fact, New Mexico—not Texas or California—was the center of settlement in the region in the years immediately preceding the war with the United States, containing nearly fifty thousand Mexicans. However, those who did settle the area were proud of their heritage and ability to develop *rancheros* of great size and success. Despite promises made in the treaty, these Californios—as they came to be known—quickly lost their land to White settlers who simply displaced the rightful landowners, by force if necessary. Repeated efforts at legal redress mostly fell upon deaf ears. In some instances, judges and lawyers would permit the legal cases to proceed through an expensive legal process only to the point where Hispanic landowners who insisted on holding their ground were rendered penniless for their efforts.

Much like Chinese immigrants, Hispanic citizens were relegated to the worst-paying jobs under the most terrible working conditions. They worked as *peóns* (manual laborers similar to enslaved people), *vaqueros* (cattle herders), and cartmen (transporting food and supplies) on the cattle ranches that White landowners possessed, or undertook the most hazardous mining tasks.

Figure \(\PageIndex{2}\): Mexican ranchers had worked the land in the American Southwest long before American “cowboys” arrived. In what ways might the Mexican *vaquero* pictured above have influenced the American cowboy?

In a few instances, frustrated Hispanic citizens fought back against the White settlers who dispossessed them of their belongings. In 1889–1890 in New Mexico, several hundred Mexican Americans formed ***las Gorras Blancas*** (the White Caps) to try and reclaim their land and

intimidate White Americans, preventing further land seizures. White Caps conducted raids of White farms, burning homes, barns, and crops to express their growing anger and frustration. However, their actions never resulted in any fundamental changes. Several White Caps were captured, beaten, and imprisoned, whereas others eventually gave up, fearing harsh reprisals against their families. Some White Caps adopted a more political strategy, gaining election to local offices throughout New Mexico in the early 1890s, but growing concerns over the potential impact upon the territory's quest for statehood led several citizens to heighten their repression of the movement. Other laws passed in the United States intended to deprive Mexican Americans of their heritage as much as their lands. "Sunday Laws" prohibited "noisy amusements" such as bullfights, cockfights, and other cultural gatherings common to Hispanic communities at the time. "Greaser Laws" permitted the imprisonment of any unemployed Mexican American on charges of vagrancy. Although Hispanic Americans held tightly to their cultural heritage as their remaining form of self-identity, such laws did take a toll.

In California and throughout the Southwest, the massive influx of Anglo-American settlers simply overran the Hispanic populations that had been living and thriving there, sometimes for generations. Despite being U.S. citizens with full rights, Hispanics quickly found themselves outnumbered, outvoted, and, ultimately, outcast. Corrupt state and local governments favored White people in land disputes, and mining companies and cattle barons discriminated against them, as with the Chinese workers, in terms of pay and working conditions. In growing urban areas such as Los Angeles, *barrios*, or clusters of working-class homes, grew more isolated from the White American centers. Hispanic Americans, like the Native Americans and Chinese, suffered the fallout of the White settlers' relentless push west.

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5.3.2: Asian Americans in the United States

Asian Americans have a distinctive distribution based in history. The western United States, and in particular, Hawaii, are physically the parts of the United States that are closest to Asia. A proximity effect similar to that of Hispanics is in play here. The figure below shows their distribution.

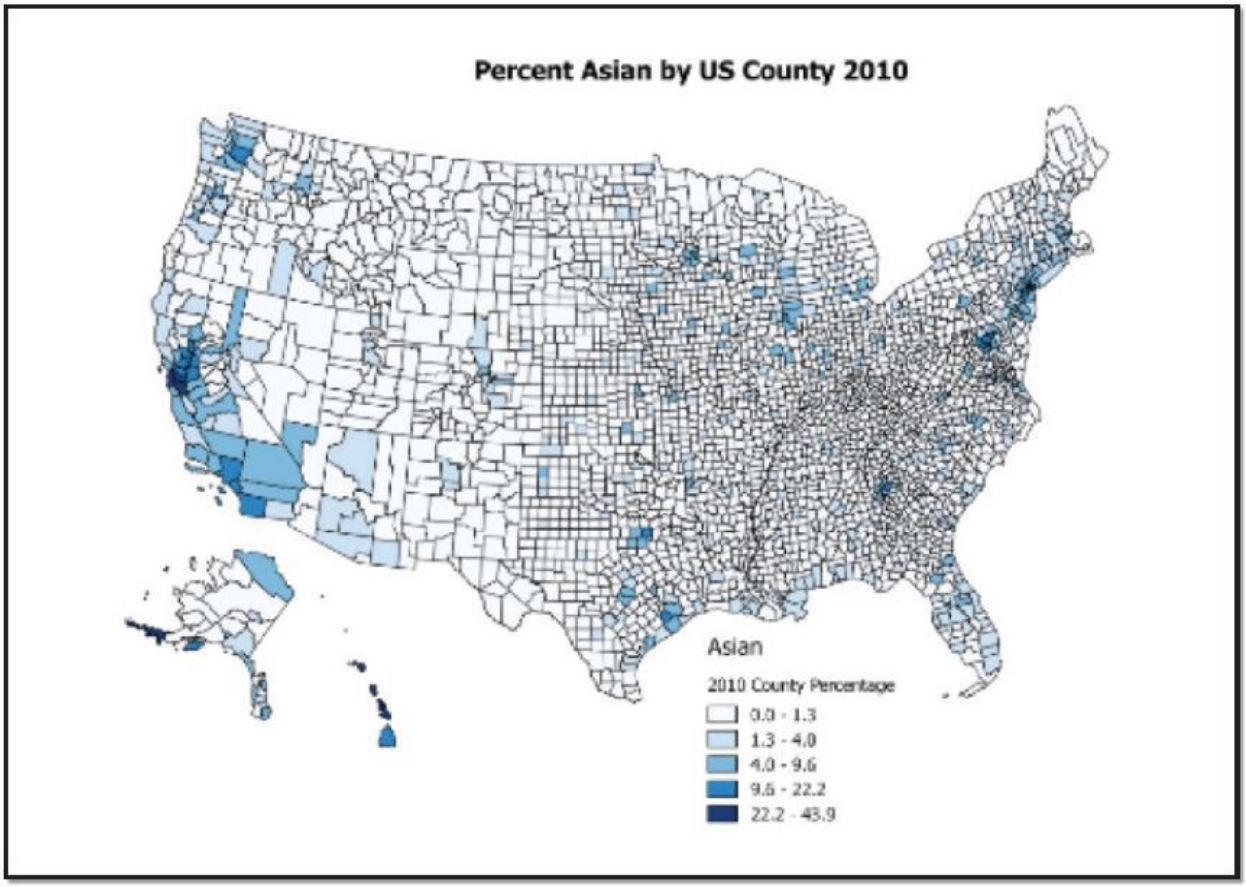

Figure 5.3.2.1: The Distribution of the Asian American Population. Original work by David Dorrell is licensed under CC BY SA 4.0.

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5.3.3: Video: I Am Not Your Asian Stereotype

Growing up in the US in predominantly white communities, Canwen Xu struggled to reconcile her American and her Chinese identities. She explains the unique ways that racial bias affects Asian Americans—and shares how she has learned to embrace all of the different parts of her background.

https://www.youtube.com/watch?v=_pUtz75lNaw

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5.3.4: Case Study: Judge Approves $2.4 Million EEOC Settlement with Four Hawaii Farms for over 500 Thai Farmworkers

Laborers Kept in Debt Bondage, Housed in Unsanitary Facilities, Threatened, and Denied Adequate Food and Water, Federal Agency Charged

LOS ANGELES - U.S. District Judge Leslie E. Kobayashi in Hawaii has approved settlements between the U.S. Equal Employment Opportunity Commission (EEOC) and four Hawaii farms totaling $2.4 million for about 500 Thai farmworker victims of national origin discrimination and retaliation, the EEOC announced today. The settlement encompasses monetary relief, options for jobs and benefits, housing, other reimbursements of expenses, and sweeping injunctive relief remedies. The four farms are Mac Farms of Hawaii, LLC [nka MF Nut Co., LLC]; Kauai Coffee Company, Inc., [nka McBryde Resources, Inc.]; Kelena Farms, Inc. and Captain Cook Coffee Company, Ltd.

The EEOC initially filed suit in U.S. District Court for the District of Hawaii in April 2011 against farm labor contractor Global Horizons and six farms in Hawaii on behalf of the Thai farmworkers. (*EEOC v. Global Horizons, Inc. d/b/a Global Horizons Manpower, Inc., Captain Cook Coffee Co., Ltd., Del Monte Fresh Produce (Hawaii), Inc., Kauai Coffee Company, Inc., Kelena Farms, Inc., Mac Farms of Hawaii, LLC, Maui Pineapple Co., et al*, Case No. CV-11-00257-LEK- RLP). One of the farms, Del Monte Fresh Produce, already settled for $1.2 million in November 2013.

In March 2014, Judge Kobayashi ruled that Beverly Hills, Calif.-based Global Horizons was liable for the pattern or practice of harassing, discriminating against, and retaliating against hundreds of Thai farmworkers in the U.S. based on their national origin and race, in violation of federal anti-discrimination laws. The EEOC named the farms in Hawaii as defendants, asserting that they were joint employers with the labor contractor, and liable due to the acts committed by Global Horizons. Global Horizons and Maui Pineapple Company remain as the only defendants left in the case, although default judgments were entered by the court.

"We worked and lived under terrible conditions, treated like animals in a cage," said Phirom Krinsoongnoen, one of the victimized Thai farmworkers. "We were housed in an overcrowded place with a few rooms but many workers, and threatened almost daily. I am grateful that the EEOC is here to help people like me."

The EEOC alleged that Thai farmworkers were contracted through Global Horizons to work at the farms sometime between 2003 and 2007 under the H2-A temporary visa program, which required the farmworkers to be provided food and housing aside from pay for work performed. Exorbitant recruitment fees placed the Thai workers into a situation of debt bondage early on. Workers were then subjected to varying degrees of denial or delay of pay; had their movements monitored and passports confiscated; had production quotas imposed that did not apply to non-Thai workers; were denied adequate food and water; and forced into unsanitary, overcrowded living conditions. Those who complained of the pattern or practice of discrimination and harassment were retaliated against, with many forced to quit or flee as a result, the EEOC said.

"This resolution reflects this agency's redoubled effort to challenge discriminatory practices against the most vulnerable workers who often live and work in the shadows of the economy," said EEOC General Counsel David Lopez. "This case strikes a blow at one of the root causes of human trafficking - discrimination based on prohibited bases."

All this alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC filed suit after first attempting to reach pre-litigation settlements through its conciliation process.

As part of the four consent decrees finalized today, Mac Farms will pay $1.6 million, Kauai Coffee will pay $425,000, Kelena Farms will pay $275,000 and Captain Cook Coffee will pay $100,000 directly to the victims. As such, the total direct monetary relief recovered is $2.4 million. In addition, Kelena Farms offered full-time jobs with generous benefits, profit-sharing & 401(k) plan options, while Captain Cook Coffee offered seasonal jobs, benefits, transportation, and housing for workers during the term of their decrees. The offers extended by Kelena and Captain Cook, valued at nearly $4.9 million, add to the direct monetary settlements over the duration of the consent decrees. The EEOC will monitor the terms of the job offers.

Sweeping injunctive relief approved by the judge in all of these consent decrees will ensure that farms and farm labor contractors (FLCs) disseminate policies and procedures prohibiting discrimination to their local workforce and to H2-A guest workers in a language they understand; conduct audits to ensure FLC compliance with the consent decree; designate a corporate compliance officer for oversight of FLCs and Title VII compliance; train managers, supervisors, and employees on their obligations under Title VII; and report to the EEOC and maintain records.

Anna Y. Park, regional attorney for the EEOC's Los Angeles District, said, "We can now move forward with ensuring that the claimants, in this case, get justice. We also hope that the injunctive relief entered into with the farms will ensure proper hiring and monitoring of farm labor contractors in the agricultural industry. We all have a responsibility to ensure that the most vulnerable workers are not denied basic human dignity and life-sustaining water and food. Farms and farm labor contractors - and the supervisors who represent them - must ensure that their workers' civil rights remain intact, no matter their race or the country they come from."

Eliminating discriminatory policies affecting vulnerable workers who may be unaware of their rights under equal employment laws or reluctant or unable to exercise them is one of six national priorities identified by the EEOC's Strategic Enforcement Plan (SEP). These policies can include disparate pay, job segregation, harassment, and human trafficking.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

5.3.4: Case Study: Judge Approves $2.4 Million EEOC Settlement with Four Hawaii Farms for over 500 Thai Farmworkers is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.3.5: Case Study: Significant EEOC Race/Color Cases (Covering Private and Federal Sectors)

In enforcing Title VII's prohibition of race and color discrimination, the EEOC has filed, resolved, and adjudicated a number of cases since 1964. Under the E-RACE Initiative, the Commission continues to be focused on the eradication of race and color discrimination from the 21st-century workplace and is seeking to retool its enforcement efforts to address contemporary forms of overt, subtle, and implicit bias. Below is an inexhaustive list of significant EEOC private or federal sector cases from 2003 to present. These cases illustrate some of the common, novel, systemic, and emerging issues in the realm of race and color discrimination.

E-Race and Other EEOC Initiatives

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- In March 2020, Porous Materials, a manufacturer in Ithaca, NY, must pay $93,000 in monetary relief and report any future harassment allegations directly to the EEOC to settle claims that it engaged in pervasive harassment based on race, sex, and national origin, according to a recent EEOC lawsuit. The extreme bullying and harassment allegedly included a manager using racial slurs toward his employees, calling foreign workers “terrorists,” telling immigrants to leave America, and making unwanted sexual advances toward female employees. The EEOC further claims the owner of Porous Materials did nothing to put a stop to the harassment. *EEOC v. Porous Materials, Inc.*, Civil Action No. 3:18-cv-01099 (N.D.N.Y. Mar. 3, 2020).
- In March 2020, Prewett Enterprises, Inc., doing business as B&P Enterprises, and Desoto Marine, LLC, rail services and disaster response companies, paid $250,000 and furnished other relief to settle a race harassment case brought by the EEOC. According to the EEOC's lawsuit, Prewett and Desoto supervisors and managers subjected African American employees to daily harassment and humiliation because of their race by calling them racially offensive and derogatory names and assigned Black employees the more dangerous job duties. Under the two-year consent decree, the businesses will revise their anti-racial harassment policies; create an 800-hotline number for employees to report complaints about discrimination, harassment, and retaliation; and conduct exit interviews of employees who leave the company. The decree also mandates training of employees and the reporting of any future complaints of race harassment to the EEOC. *EEOC v. Prewett Enterprises, Inc. d/b/a B&P Enterprises, and Desoto Marine,LLC*, Civil Action No. 3:18-cv-213 (N.D. Miss. Mar. 18, 2020).
- In January 2020, Jacksonville Plumbers and Pipefitters Joint Apprenticeship and Training Trust (JPPJATT), which sponsors an apprenticeship program that trains participants to work in the plumbing and pipefitting industries in Northern Florida, revised its selection process, paid $207,500 and provided other significant equitable relief to settle EEOC’s class race discrimination lawsuit which sought relief for applicants who allegedly were denied apprentice-ship positions because they were Black. In addition to the monetary relief, the four-year consent decree provides for extensive injunctive relief to help secure a diverse workforce; requires JPPJATT to hire a consultant to review and revise its selection process and implement and train employees in the new process; enjoins JPPJATT from discriminating against Black applicants on the basis of race in the future; and requires the company to hold information sessions at

locations in the Black community. *EEOC v. Jacksonville Plumbers and Pipefitters Joint Apprenticeship and Training Trust*, Case No. 3:18-cv-862-J-32JRK (M.D. Fla. Jan. 2020).

- In January 2020, Falcon Foundry Company agreed to resolve a racial harassment class case which was filed against it by the Youngstown Branch of the National Association for the Advancement of Colored People (NAACP) and the EEOC. The NAACP filed an EEOC charge on behalf of some employees and the EEOC's investigation found that a top company official subjected employees to derogatory racial comments and that there was a noose hanging in the facility. The EEOC also found that Black and Hispanic employees were disciplined for violating company policies while Caucasian employees who violated the same policies were not disciplined. On these bases, the EEOC found that a class of individuals were harassed and discriminated against because of their race, Black; their national origin, Hispanic; or their association with a Black or Hispanic employee in violation of Title VII of the Civil Rights Act of 1964. The company conducted an internal investigation, trained its employees, and terminated the company official to address the claims filed against it. Additionally, the EEOC, the NAACP and Falcon Foundry signed a conciliation agreement that requires Falcon Foundry to pay substantial monetary relief to identified victims; hold managers and supervisors accountable for discrimination in the workplace and provide ongoing training to all employees; revise its policies and procedures for dealing with discrimination; and report to the EEOC for the agreement's multi-year term.
- In November 2019, Janitorial Service Provider Diversified Maintenance Systems, LLC paid $750,000 and furnished significant equitable relief to settle a federal race discrimination, harassment and retaliation lawsuit. The complaint alleged that since at least January, 2012, Diversified engaged in an ongoing pattern or practice of race discrimination against African-American job applicants in Maryland, Washington D.C., and Philadelphia metropolitan areas by refusing to hire Black applicants for custodian, lead custodian or porter positions and racially harassing a Black janitorial supervisor in the presence of customers and employees. The lawsuit also alleged that when he complained, the company demoted the Black supervisor, changed his work assignments, hours, and conditions and then fired him. The 30-month consent decree enjoins Diversified from discriminating against or harassing anyone based on race or engaging in retaliation and requires the company to designate an internal monitor to ensure compliance with the consent decree. Additionally, Diversified must implement a targeted hiring plan that tracks the number and race of applicants, and reason(s) why they are not hired. It also must create a policy to prohibit harassment and retaliation and provide training on preventing discrimination, harassment and retaliation. *EEOC v. Diversified Maintenance Systems, LLC*., Case No. 8:17-cv-01835 (D. Md. *settlement announced* Nov. 25, 2019).
- In November 2019, a federal judge approved the settlement of the 2013 EEOC lawsuit challenging the way a discount retailer conducted criminal background checks of job applicants because the process allegedly discriminated against Black workers with criminal histories. In addition to paying $6 million, the company agreed to hire a criminologist to develop a new background check process that accounts for job applicants' actual risk of recidivism. *EEOC v. Dolgencorp LLC d/b/a Dollar General*, Civil Action No. 13 C 4307 (N.D. Ill. Nov. 18, 2019).
- In November 2019, a federal judge approved a $1.2 million settlement resolving the EEOC's racial harassment suit against Nabors Corporate Services Inc. and another Houston-based oil field services company. Nine Black employees and a White co-worker received payments. The EEOC lawsuit alleged that Black employees assigned to fracking and coiled tubing oilfield service operations in Pleasanton, Texas, were subjected to a hostile work environment based on race since at least 2012 and that Nabors and C&J Well Services Inc. retaliated against employees who

complained about the harassment. Although they deny the allegations, the companies also agreed to provide the affected workers with neutral employment references; maintain social media and information policies that prohibit the use of email, software, or hardware or any company-owned devices to be used for racially offensive communications or similar misconduct; and maintain procedures that encourage workers to come forward with race bias complaints. *EEOC v. Nabors Indus., Ltd.* No. 5:16-cv-00758 (W.D. Tex. consent decree approved Nov. 12, 2019).

- In October 2019, Breakthru Beverage Illinois, LLC (BBI), a distributor of alcoholic beverages, agreed to pay $950,000 to resolve an investigation of race and national origin discrimination conducted by the EEOC. Based on its investigation, the EEOC had found reasonable cause to believe that BBI discriminated against Illinois sales employees by offering them account and territory assignments that, when accepted, resulted in national origin or race discrimination, which violates Title VII of the Civil Right Act of 1964. Pursuant to this settlement, BBI will The settlement provides monetary relief to the class identified by the EEOC and ensures the company will take proactive measures to prevent such discrimination from occurring in the future. Pursuant to the terms of the settlement, BBI also will conduct anti-discrimination training for its Illinois sales force; put in place systems to further encourage diverse applicants for open positions; revise its anti-discrimination policy to expressly reference that it prohibits segregating or making assignments based on race and/or national origin and distribute the revised policy to its Illinois sales force; hire a monitor to track the demographics of employees applying for and receiving offers for specified Illinois sales positions; provide periodic reporting on the demographics of its Illinois sales force for the next two years; and post an internal notification to its Illinois employees of this resolution.
- In February 2019, the Jacksonville Association of Fire Fighters, Local 122, IAFF agreed to pay $4.9 million to settle a race discrimination lawsuit. The EEOC's 2012 lawsuit against the union alleged that the union advocated for an unlawful promotional process that had a disparate impact on African-American promotional candidates even after it learned that the EEOC had received charges challenging the city's promotion practices. *EEOC v. Jacksonville Association of Firefighters, Local 122*, *IAFF*, No. 3:12-cv-491-J-32MCR (M.D. Fla. Feb. 5, 2019).
- In December 2017, Laquila Group Inc., a Brooklyn-based construction company, paid $625,000 into a class settlement fund and took measures to eliminate race bias and retaliation against black construction laborers. In its lawsuit, EEOC alleged that Laquila engaged in systemic discrimination against black employees as a class by subjecting them to racial harassment, including referring to them using the N-word, "gorilla," and similar epithets. The Commission also alleged that the company fired an employee who complained about the harassment. The consent decree also requires Laquila to set up a hotline for employees to report illegal discrimination, provide anti-discrimination training to its managers, adopt revised anti-discrimination policies and employee complaint procedures and report all worker harassment and retaliation complaints to the EEOC for the 42-month duration of the agreement. ***EEOC v. The Laquila Grp., Inc.***, No. 1:16-cv-05194 (E.D.N.Y. consent decree approved Dec. 1, 2017).
- In November 2017, after an extensive five-year, complicated systemic investigation and settlement efforts, the EEOC reached an agreement with Lone Star Community College covering recruitment, hiring and mentoring of African-American and Hispanic applicants and employees. The terms of the agreement were designed to enhance the College's commitment to the recruitment of African-American and Hispanics and to engage in meaningful monitoring of the College's efforts to reach its recruitment and hiring goals. The agreement included some novel relief, such as: implementation of a new applicant tracking system; establishing an advisory

committee focused on the recruitment, development and retention of minority groups; hiring of recruitment firms; developing new interview protocol training; establishing a mentoring program for recently hired minority employees; and updating job descriptions for all college manager positions to require as a job component the diversity of its workforce.

- In August 2017, Ford Motor Company agreed to pay nearly $10.125 million to settle sex and race harassment investigation by the EEOC at two Ford plants in Chicago area. In its investigation, the EEOC found reasonable cause to believe that personnel at two Ford facilities in the Chicago area, the Chicago Assembly Plant and the Chicago Stamping Plant, had subjected female and African-American employees to sexual and racial harassment. The EEOC also found that the company retaliated against employees who complained about the harassment or discrimination. In addition to the monetary relief, the conciliation agreement provides ensures that during the next five years, Ford will conduct regular training at the two Chicago-area facilities; continue to disseminate its anti-harassment and anti-discrimination policies and procedures to employees and new hires; report to EEOC regarding complaints of harassment and/or related discrimination; and monitor its workforce regarding issues of alleged sexual or racial harassment and related discrimination.
- In July 2017, Bass Pro Outdoor World LLC agreed, without admitting wrongdoing, to pay $10.5 million to a class of African-American and Hispanic workers the EEOC alleged it discriminated against by failing to hire because of their race and/or national origin in violation of Title VII. According to the consent decree, Bass Pro will engage in good faith efforts to increase diversity by reaching out to minority colleges and technical schools, participating in job fairs in communities with large minority populations and post job openings in publications popular among Black and Hispanic communities. Additionally, every six months for the next 42 months, Bass Pro is to report to the EEOC its hiring rates on a store-by-store basis. ***EEOC v. Bass Pro Outdoor World LLC***, Case No. 4:11-cv-03425 (S.D. Tex. consent decree filed July 24, 2017).
- In June 2017, the EEOC investigated a restaurant operating over 100 facilities in the Eastern U.S. involving issues of hiring discrimination against African Americans. The restaurant agreed to pay $9.6 million to class members as part of a conciliation agreement. Additionally, the restaurant will overhaul its hiring procedures and has agreed to institute practices aimed at meeting hiring targets consistent with the labor market in each of the locations in which it has facilities. The new hiring procedures include implementation of an extensive applicant tracking system that will better enable the EEOC and the company to assess whether the company is meeting the targeted hiring levels. The restaurant will also provide an annual report to EEOC detailing the company's efforts in complying with the agreement and its objectives over the term of the five-year agreement, including detailed hiring assessments for each facility covered by the agreement.
- In May 2017, Rosebud Restaurants agreed to pay $1.9 million to resolve a race discrimination lawsuit brought by the EEOC against 13 restaurants in the Chicago area. The chain was charged with refusing to hire African-American applicants and having managers who used racial slurs to refer to African-Americans. The monetary award will be paid to African-American applicants who were denied jobs. Pursuant to a consent decree, the chain also agreed to hiring goals with the aim of having 11 percent of its future workforce be African American. Rosebud is also required to recruit African-American applicants as well as train employees and managers about race discrimination. ***EEOC v. Rosebud Rest***., No. 1:13-cv-06656 (N.D. Ill. May 30, 2017).
- In April 2017, Sealy of Minnesota paid $175,000 to resolve a charge of racial harassment filed with the EEOC. An investigation by the EEOC's Minneapolis Area Office revealed that the mattress and box spring manufacturing company in St. Paul, Minn. subjected its Black and

Hispanic employees to severe racial harassment in the form of KKK hoods, nooses, and racial slurs and jokes. The agency also found that the company discriminated against black and Hispanic employees in the selection of lead positions at the St. Paul facility. ***EEOC v. Sealy of Minn***., (D. Minn. Apr. 20, 2017).

- In December 2016, Crothall Services Group, Inc., a nationwide provider of janitorial and facilities management services, settled an EEOC lawsuit by adopting significant changes to its record-keeping practices related to the use of criminal background checks. According to the EEOC's complaint, Crothall used criminal background checks to make hiring decisions without making and keeping required records that disclose the impact criminal history assessments have on persons identifiable by race, sex, or ethnic group, a violation of Title VII of the Civil Rights Act of 1965. ***EEOC v. Crothall Servs. Group, Inc***., Civil Action No. 2:15-cv-03812-AB (E.D. Pa. Dec. 16, 2016).
- In August 2016, a magistrate judge reaffirmed that "African" has long been recognized as an acceptable class entitled to protection under Title VII. The EEOC alleged that the Defendants, a health care management system and nursing home discriminated against African employees, specifically employees from Ethiopia and Sudan, when it terminated four personal care providers all on the same day, allegedly for failing to pass a newly instituted written exam. The EEOC brought disparate impact and treatment claims based on race and national origin, and a retaliation claim for a white supervisor who stood up for the African workers and was fired several months before the test was instituted. Defendants moved for dismissal arguing (1) Africa is not a nation and so cannot serve as the basis of a national origin claim, (2) EEOC failed to allege any shared cultural or linguistic characteristics between the aggrieved individuals so they could not constitute a protected class; and (3) the EEOC's retaliation claim must be dismissed because EEOC failed to allege protected activity or the Defendants had knowledge of the white supervisor's motivations. The Magistrate Judge recommended that the motion be denied in total. ***EEOC v. Columbine Health Sys. & New Mercer Commons***, Civ. Action No. 15-cv-01597-MSK-CBS (D. Colo. Aug. 19, 2016).
- In June 2016, the EEOC obtained a $350,000 settlement in its race discrimination lawsuit against defendant FAPS, Inc., a company located at Port Newark, N.J., involved in the processing for final sale of shipped automobiles. In this case, the Commission alleged that the company engaged in a pattern-or-practice of race discrimination by relying on word-of-mouth hiring which resulted in a predominantly white workforce despite the substantial African-American available workforce in the Newark area. The agency further alleged that FAPS refused to hire qualified African-American candidates, including by telling them that no positions were available when in fact FAPS was hiring. Finally, the EEOC alleged that FAPS' employment application contained improper pre-employment medical inquiries in violation of the ADA. Besides the monetary compensation, the five year consent decree requires FAPS to meet substantial hiring goals for African-Americans; give hiring priority to rejected class members who are interested in working at the company; use recruiting methods designed to increase the African-American applicant pool; and hire an EEO coordinator to ensure compliance with Title VII. ***EEOC v. FAPS, Inc***., C.A. No. No. 2:10-cv-03095 (D.N.J. June 15, 2016).
- In April 2015, Local 25 of the Sheet Metal Workers' International Association and its associated apprenticeship school agreed to create a back pay fund for a group of minority sheet metal workers in partial settlement of race discrimination claims against the local union. Pursuant to the settlement, it is estimated that the union will pay approximately $12.7 million over the next five years and provide substantial remedial relief to partially resolve claims made against the union in 1991-2002. The trade union, which is responsible for sheet metal journeypersons in

northern New Jersey, allegedly discriminated against black and Hispanic journeypersons over a multi-year period in hiring and job assignments. An analysis of hours and wages showed African-American and Hispanic workers received fewer hours of work than their white co-workers during most of this same timeframe. This particular agreement covers from April 1991 through December 2002. ***EEOC v. Local 28 of the Sheet Metal Workers' Int'l Ass'n***, Case No. 71 Civ. 2887 (LAK) (S.D.N.Y. April 2, 2015).

- In December 2015, Hillshire Brands (formerly known as Sara Lee Corporation) agreed to pay $4 million to 74 workers at the now-shuttered Paris, Texas, plant, including the dozens of people who sought EEOC charges against Hillshire and other aggrieved workers identified by the EEOC and the plaintiffs. This resolution settles claims that the company subjected a class of Black employees to a hostile work environment that included racist graffiti and comments, that included the N-word and "boy." The company also agreed to implement training at all of its plants in a bid to end consolidated suits from the EEOC and former worker Stanley Beaty. The consent decree also requires Hillshire to implement anti-racism training and create a mechanism for employees at its existing plants to confidentially report instances of harassment, discrimination and retaliation. The settlement also requires Hillshire to designate one employee to serve as a point-of-contact for those who feel they've been treated improperly and to punish workers with suspensions and even termination who are found "by reasonable evidence" to have engaged in racial bias or behavior related to it. ***EEOC v. Hillshire Brands Co. f/k/a Sara Lee Corp***., No. 2:15-cv-01347 (E.D. Tex. consent decree filed 12/18/15) and ***Beaty et al v. The Hillshire Brands Co. et al.***, No. 2:14-cv-00058 (E.D. Tex. consent decree filed 12/18/15).
- In October 2015, a federal judge held that the operators of an Indianapolis Hampton Inn in contempt for failing to comply with five different conditions settling the EEOC's class race discrimination and retaliation lawsuit against the companies. The judge faulted Noble Management LLC and New Indianapolis Hotels for failing to: (1) properly post notices; (2) properly train management employees; (3) keep employment records; (4) institute a new hiring procedure for housekeeping employees; and (5) reinstate three former housekeeping employees. The judge also faulted Noble and New Indianapolis Hotels for comingling of medical records in employee personnel files. As background, the EEOC filed suit against operators New Indianapolis Hotels LLC and Noble Management LLC in September 2010, alleging that their Hampton Inn fired African-American housekeepers because of their race and in retaliation for complaints about race discrimination. The agency also charged that the hotel paid lower wages to Black housekeepers, excluded Black housekeeping applicants on a systemic basis, and failed to maintain records required by law in violation of Title VII. In September 2012, the judge entered a five-year consent decree resolving the EEOC's litigation against the hotel operators. The decree provided $355,000 in monetary relief to approximately 75 African-American former housekeeping employees and applicants and required training, notice posting, reinstatement of three former housekeeping employees, a new hiring procedure for housekeeping employees and ordered that the defendants maintain employment-related records. The court also enjoined the operators from race discrimination and retaliation in the future. In March 2014, following the filing of the EEOC's contempt motion, Judge Lawrence ruled that the defendants violated the terms of the 2012 decree and ordered Defendants to pay more than $50,000 in back wages to the three former housekeepers whose reinstatement was delayed. Defendants were also ordered to: (1) provide monthly reporting to the EEOC on compliance with the new hiring procedure, recordkeeping and posting; (2) pay fines for late reporting; (3) allow random inspections by the EEOC subject to a fine, for failure to grant access; (4) pay fines for failure to post, destroying records or failing to distribute employment applications; (5) provide EEOC with

any requested employment records within 15 days of a request; (6) cease comingling medical records; and (7) train management employees. The posting and training provisions of the Decree were also extended by two years. In November 2015, the judge awarded $50,515 in fees and $6,733.76 in costs to the EEOC because the "Defendants willfully violated the explicit terms of the Consent Decree and repeatedly failed to comply with it [.]" ***EEOC v. New Indianapolis Hotels LLC and Noble Management LLC***, C.A. No. 1:10-CV-01234-WTL-DKL (N.D. Ind. Nov. 9, 2015) (fee ruling).

- In September 2015, BMW Manufacturing Co. settled for $1.6 million and other relief an EEOC lawsuit alleging that the company's criminal background check policy disproportionately affects black logistics workers at a South Carolina plant. Specifically, the EEOC alleged that after learning the results of the criminal background checks around July 2008, BMW denied plant access to 88 logistics employees, resulting in their termination from the previous logistics provider and denial of hire by the new logistics services provider for work at BMW. Of those 88 employees, 70 were Black. Some of the logistics employees had been employed at BMW for several years, working for the various logistics services providers utilized by BMW since the opening of the plant in 1994. Under the terms of a consent decree signed by Judge Henry M. Herlong of the U.S. District Court for the District of South Carolina, the $1.6 million will be shared by 56 known claimants and other black applicants the EEOC said were shut out of BMW's Spartanburg, S.C., plant when the company switched to a new logistics contractor. In addition to the monetary relief, the company will provide each claimant who wishes to return to the facility an opportunity to apply for a logistics position. BMW will also notify other applicants who have previously expressed interest in a logistics position at the facility of their right to apply for work, the decree states. BMW has implemented a new criminal background check policy and will continue to operate under that policy throughout the three-year term of the decree. The company is expressly enjoined from "utilizing the criminal background check guidelines" challenged by the EEOC in its lawsuit, the decree states. The agreement also imposes on BMW notice-posting, training, record-keeping, reporting and other requirements. ***EEOC v. BMW Mfg. Co***., No. 7:13-cv-01583 (D.S.C. consent decree filed Sep. 8, 2015).
- In August 2015, Target Corp. settled for $2.8 million an EEOC charge that the retailer's former tests for hiring for professional jobs discriminated against applicants based on race, sex, and disability. Three assessments used by Target disproportionately screened out female and racial minority applicants, and a separate psychological assessment was a pre-employment medical examination that violated the Americans with Disabilities Act, the EEOC had charged. Target also violated Title VII of the 1964 Civil Rights Act by failing to maintain the records sufficient to gauge the impact of its hiring procedures. Under the three-year conciliation agreement, reached before any lawsuit was filed, Target has discontinued the use of the tests and made changes to its applicant tracking system, the EEOC said. About 4,500 unsuccessful applicants affected by the alleged discriminatory tests now are eligible to file claims for monetary relief.
- In March 2015, a Texas-based oil and gas drilling company agreed to settle for $12.26 million the EEOC's lawsuit alleging discrimination, harassment and retaliation against racial minorities nationwide. According to a complaint filed by the EEOC the same day as the proposed decree, Patterson-UTI had engaged in patterns or practices of hostile work environment harassment, disparate treatment discrimination and retaliation against Hispanic, Latino, Black, American Indian, Asian, Pacific Islander and other minority workers at its facilities in Colorado and other states. Under the proposed four-year consent decree, the drilling company also will create a new vice president position to be filled by a "qualified EEO professional" who will facilitate, monitor and report on the company's compliance with certain training, management

evaluation, minority outreach, and other remedial measures. ***EEOC v. Patterson-UTI Drilling Co.*, No. 1:15-cv-00600 (D. Colo. consent decree filed Mar. 24, 2015).**

- In January 2015, Skanska USA Building, Inc., a building contractor headquartered in Parsippany, N.J., paid $95,000 to settle a racial harassment and retaliation lawsuit brought by the EEOC. According to the EEOC's suit, Skanska violated federal law by allowing workers to subject a class of Black employees who were working as buck hoist operators to racial harassment, and by firing them for complaining to Skanska about the misconduct. Skanska served as the general contractor on the Methodist Le Bonheur Children's Hospital in Memphis, where the incidents in this lawsuit took place. The class of Black employees worked for C-1, Inc. Construction Company, a minority-owned subcontractor for Skanska. Skanska awarded a subcontract to C-1 to provide buck hoist operations for the construction site and thereafter supervised all C-1 employees while at the work site. The EEOC charged that Skanska failed to properly investigate complaints from the buck hoist operators that white employees subjected them to racially offensive comments and physical assault. ***EEOC v. Shanska USA Building, Inc.*, No. 2:10-cv-02717 (W.D. Tenn. Jan. 29, 2015).**
- In December 2014, two Memphis-based affiliates of Select Staffing, employment companies doing business in Tennessee, agreed to pay $580,000 to settle allegations they engaged in race and national origin discrimination. The EEOC's lawsuit charged that the staffing firms had discriminated against four Black temporary employees and a class of Black and non-Hispanic job applicants by failing to place or refer them for employment. The four temporary employees said while seeking employment through the company's Memphis area facilities, they witnessed Hispanic applicants getting preferential treatment in hiring and placement. ***EEOC v. New Koosharem Corp.*, No. 2:13-cv-2761 (W.D. Tenn. consent decree filed Dec. 5, 2014).**
- In December 2014, three related well-servicing companies agreed to pay $1.2 million to settle allegations by the Equal Employment Opportunity Commission of verbal abuse of minority employees. The EEOC complaint alleged that J&R employees regularly used racial slurs to refer to Black, Hispanic and Native American employees. Employees of these racial groups on company rigs regularly heard racist terms and demeaning remarks about green cards and deportation, the EEOC complaint said. Several individuals complained to management, but their complaints were minimized or ignored, the complaint alleged. For example, an area supervisor responded to employee complaints by telling the complainants they could quit or by saying that he was sick of everyone coming to him and that everyone simply needed to do their jobs. In addition, the complaint stated that several men were demoted or fired after taking their complaints of discrimination to the Wyoming Department of Workforce Services' Labor Standards Division. ***EEOC v. Dart Energy Corp.*, No. 13-cv-00198 (D. Wyo. consent decree filed Dec. 1, 2014).**
- In November 2014, a Rockville, Md.-based environmental remediation services contractor paid $415,000 and provide various other relief to settle a class lawsuit alleging that the company engaged in a pattern or practice of race and sex discrimination in its recruitment and hiring of field laborers. Under a three-year consent decree signed Nov. 10 by Judge Paul W. Grimm of the U.S. District Court for the District of Maryland, ACM Services Inc. will pay a combined $110,000 to the two Hispanic female workers who first brought the allegations to the EEOC's attention and will establish a class fund of $305,000 for other potential claimants to be identified by the agency. According to the EEOC, the company has relied exclusively on "word-of-mouth recruitment practices" for field laborer positions, with the intent and effect of restricting the recruitment of Black and female applicants. ACM also subjected the two charging parties to harassment based on sex, national origin and race, and it retaliated against them for opposing

the mistreatment-and against one of them based on her association with Black people-by firing them, the commission alleged. The agreement applies to all ACM facilities and locations nationwide and has extra-territorial application to the extent permitted by Title VII of the 1964 Civil Rights Act. In addition to the monetary relief, the decree requires the company to set numerical hiring goals for its field laborer positions, recruit Black and female applicants via print and Internet advertisements and report to the EEOC regarding its attainment of the numerical hiring goals and other settlement terms. ***EEOC v. ACM Servs., Inc.*, No. 8:14-cv-02997 (D. Md. consent decree filed Nov. 10, 2014).**

- In November 2014, Battaglia Distributing Corporation paid $735,000 to a group of current and former African-American employees. In this case, the EEOC alleged that the Battaglia tolerated an egregious race-based hostile work environment, requiring African-American dock workers to endure harassment that included racial slurs (including the "N" word). Among other relief provided under the decree, Battaglia also will provide its managers with training on Title VII and report regularly to the EEOC on any complaints it has received, as well as provide other data to demonstrate that it has not retaliated against any of the participants in the litigation. ***EEOC v. Battaglia Distrib. Corp.*, No. 13-cv-5789 (N.D. Ill. consent decree entered Nov. 10, 2014).**
- In October 2014, Prestige Transportation Service L.L.C., a Miami company that provides transportation services to airline personnel to and from Miami International Airport, paid $200,000 to settle a race discrimination and retaliation lawsuit, in connection with actions allegedly committed under different ownership. The EEOC charged in its suit that Prestige's predecessor company, Airbus Alliance Inc., repeatedly instructed its human resource manager to not hire African-American applicants because they were "trouble" and "would sue the company." ***EEOC v. Prestige Transp. Service L.L.C.*, No. 1:13-cv-20684(JEM) (S.D. Fla. consent decree filed Sept. 26, 2014).**
- In September 2014, McCormick & Schmick's settled a 2008 EEOC lawsuit, alleging a pattern or practice of race discrimination against African-American job applicants by refusing to hire them for front-of-the-house positions and by denying equal work assignments because of their race. The consent decree established a claims fund of $1.3 million and provides substantial injunctive relief, including goals for hiring of Black job applicants for front-of-the-house positions, targeted recruitment efforts, and extensive self-assessment of hiring and work assignment practices to ensure non-discrimination and compliance with the terms of the consent decree. McCormick & Schmick's also must designate an outside monitor to oversee compliance with the consent decree and submit reports to the EEOC. ***EEOC v. McCormick & Schmick's Seafood Restaurants, Inc. and McCormick and Schmick Restaurant Corporation*, No. WMN-09-cv-984 (D. Md. Sep. 12, 2014).**
- In September 2013, U-Haul agreed to pay $750,000 to eight African-American current and former employees and to provide other relief to settle a race and retaliation discrimination lawsuit filed by the EEOC. According to the EEOC's suit, Black employees were subjected to racial slurs and other racially offensive comments by their White supervisor, at U-Haul's Memphis facility. The EEOC's complaint charged that the supervisor regularly referred to Black employees with the "N" word and other derogatory slurs. The suit further alleged that the company engaged in retaliation by firing one employee when he complained of racial harassment to the company president. Under the two-year consent decree, U-Haul Company of Tennessee must maintain an anti-discrimination policy prohibiting race discrimination, racial harassment, and retaliation, and provide mandatory training to all employees regarding the policy. Additionally, the marketing company president will receive training on race discrimination and on obligations to report race discrimination, racial harassment, and retaliation. Finally, the company will

provide written reports to the EEOC regarding any race discrimination or racial harassment complaints by employees. ***EEOC v. U-Haul Co. Int'l & U-Haul Co. of Tenn.*, No. 2:11-cv-02844 (W.D. Tenn. Sep. 25, 2013).**

- In September 2013, a Kentucky coal mining company paid $245,000 to 19 total applicants and amend its hiring practices to settle a racial discrimination suit brought by the EEOC. River View Coal LLC, a unit of Alliance Resource Partners LP, also will have to regularly report to the EEOC on its hiring practices for two years to escape the suit, which alleged that the company refused to hire a class of African-American applicants for coal mining jobs at its Waverly, Ky., location since 2008. The consent decree also requires River View to refrain from any future racial discrimination in its hiring procedures. ***EEOC v. River View Coal, LLC*, No. 4:11-cv-00117(JHM)(HBB) (W.D. Ky. Sep. 26, 2013).**
- In December 2012, a South Dallas, TX mill agreed to pay $500,000 to a class of 14 Black employees to settle an EEOC race discrimination suit alleging that the mill exposed Black employees to violent, racist graffiti and racial slurs by co-workers, such as "KKK," swastikas, Confederate flags, "white power" and other racist terms, including "die, n----r, die," as well as the display of nooses at an employee workstation. Black employees alleged that the supervisors allowed the behavior to continue unchecked. The consent decree permanently enjoins the company from discriminating against employees on the basis of race and requires the company to enact a graffiti abatement policy and undergo annual reviews of its compliance for two years ***EEOC v. Rock-Tenn Services Co.*, No. 3:10-cv-01960 (N.D. Tex. filed Sep. 29, 2012).**
- In November 2012, a federal court ordered Caldwell Freight Lines, a now defunct company, to pay $120,000 to settle a race discrimination complaint stemming from its alleged refusal to hire Black applicants to work on its loading dock even though it is no longer in business. According to the EEOC's lawsuit, 51 African American applicants sought work with Caldwell Freight and none was hired even though many had previous dock experience and were qualified for the positions. An EEOC investigation revealed that the company hired no Black dock workers during the period studied and that one high-level manager allegedly said he "didn't want any [B]lacks on the dock." Under the terms of the consent decree, if the company resumes operations, it will have to implement an anti-discrimination policy and report to the EEOC all discrimination complaints and information regarding its hiring practices during the term of the decree. ***EEOC v. Caldwell Freight Lines,* Case No. 5:11CV00134 (W.D.N.C. Aug. 3, 2012).**
- In October 2012, a federal district court in Texas ordered AA Foundries Inc. to take specific measures to prevent racial harassment of Black employees at its San Antonio plant following a $200,000 jury verdict finding the company liable for race discrimination under Title VII. According to the EEOC, evidence at trial indicated that a White supervisor used "the N word" in reference to Black employees, called male Black employees "motherfucking boys," posted racially tinged materials in an employee break room, and accused Black employees of "always stealing and wanting welfare." After several employees filed racial harassment charges with the EEOC, a noose was displayed in the workplace. When some employees complained, the supervisor allegedly replied the noose was "no big deal" and that workers who complained were "too sensitive." Additionally, at trial, he also admitted it did not bother him to hear racially derogatory language in the workplace. In a judgment entered Oct. 9, the district court upheld the jury verdict that AA Foundries must pay punitive damages of $100,000 to former employee Christopher Strickland, $60,000 to former employee Leroy Beal, and $40,000 to former employee Kenneth Bacon. Because trial evidence also showed that AA Foundries lacked effective internal procedures to handle discrimination complaints, it must conduct at least one hour of equal employment opportunity training for all employees within 60 days of the court's

Oct. 9 order. The company must distribute copies of its revised written anti-harassment policy to all current and future employees and post the policy in the break room of its San Antonio manufacturing facility. Every employee shall be notified of the procedure for initiating racial harassment or other bias complaints, including notice of their right to file EEOC charges if the company does not resolve their complaint. ***EEOC v. AA Foundries Inc.*****, No. 11-792 (W.D. Tex. judgment and injunction entered Oct. 9, 2012).**

- In September 2012, two California-based trucking firms agreed to settle for $630,000 an EEOC lawsuit alleging one company violated Title VII by permitting the harassment of African American, Latino, and East Indian workers and by otherwise discriminating based on race, national origin, and religion. In its original complaint, EEOC alleged that since at least 2003, management officials and employees at Scully Distribution referred to Black drivers as "niggers," East Indian drivers as "Taliban" and "camel jockeys," and a Latino manager as a "spic." EEOC also charged Scully gave non-White drivers less favorable job assignments than their White counterparts. EEOC claimed Scully also fired one of the three employees who filed EEOC charges complaining about the alleged harassment in retaliation for his protected activity. Scully denied all of EEOC's allegations, but it and its successor Ryder System Inc. agreed to resolve the suit. ***EEOC v. Scully Distribution Servs. Inc.*****, No. 11-cv-08090 (C.D. Cal. proposed consent decree filed Sep. 25, 2012).**
- In August 2012, a Tampa, Fla.-based environmental services company agreed to settle a race discrimination and harassment case brought by the EEOC and eleven intervening plaintiffs for $2,750,000 and other relief. In the lawsuit, EEOC alleged that the harassment of African American employees included multiple displays of nooses, the repeated use of the "N-word," and physical threats. The EEOC also claimed that four White employees were harassed by their White co-workers because they associated with African-American employees. Two African-American employees also alleged they were fired because of their race and two White employees asserted they were fired for engaging in protected activity and in retaliation for associating with African-American employees. At summary judgment, the district court denied in part the company's motion, stating that the company ignored both the extreme symbolism of a noose and that a reasonable jury could conclude that the worksite had at least some racial tension given the other nooses, threats, and racial epithets that each African-American employee experienced, and that the noose was intended to intimidate all African-Americans. The court also found that a reasonable jury could decide that Defendant failed to exercise reasonable care to prevent or remedy the harassment since it did not distribute its written policy forbidding racial harassment to its employees, post it at the job-site, or train the employees about what constitutes harassment and how to report it. The court, however, determined that Defendant was entitled to summary judgment on the hostile work environment claims brought on behalf of the White employees because injury must be personal and thus a White employee cannot sue for harassment of African-American employees that the White employee happened to see. Lastly, intervening Plaintiff provided direct evidence that the supervisor who fired him did so because of his race (through the supervisor's comment that he could get rid of "that . . . nigger. 2011 U.S. Dist. LEXIS 110149 (N.D. Ill. Sept. 27, 2011). Although the company denied liability for the harassment, the three-year consent decree enjoins the company from engaging in further retaliation, race discrimination, or racial harassment, including associational bias. The company also must revise its anti-discrimination policy; provide employee training on the revised policy; and develop a procedure for investigating complaints of race discrimination and harassment and evaluating supervisors' compliance with the revised

anti-discrimination policy. ***EEOC v. WRS Infrastructure and Env't Inc. d/b/a WRS Compass*, No. 1:09-cv-4272 (N.D. Ill. consent decree filed Aug. 23, 2012).**

- In June 2012, Yellow Transportation Inc. and YRC Inc. agreed to settle for $11 million an EEOC suit alleging that the trucking companies permitted the racial harassment of Black employees at a now-closed Chicago Ridge, Ill., facility. The proposed consent decree would settle both EEOC's suit and a private suit filed in 2008 by 14 Black employees under the Civil Rights Act of 1866 (42 U.S.C. § 1981), which were consolidated for purposes of settlement. In its complaint, the EEOC claimed that Black employees at the Chicago Ridge facility, which closed in 2009, were subjected to multiple incidents of hangman's nooses and racist graffiti, comments, and cartoons. EEOC claimed that Yellow and YRC also subjected Black employees to harsher discipline and closer scrutiny than their White counterparts and gave Black employees more difficult and time-consuming work assignments. Although numerous Black employees complained about these conditions, Yellow and YRC failed to act to correct the problems, EEOC alleged. The court granted preliminary approval of a proposed consent decree, but it must grant final approval following a fairness hearing before the decree takes effect. ***EEOC v. Yellow Transp. Inc.*, No. 09 CV 7693 (N.D. Ill. preliminary approval granted June 28, 2012).**
- In January 2012, Pepsi Beverages Company, formerly known as Pepsi Bottling Group, agreed in a post-investigation conciliation to pay $3.13 million and provide training and job offers to victims of the former criminal background check policy to resolve an EEOC charge alleging race discrimination in hiring. "The EEOC's investigation revealed that more than 300 African Americans were adversely affected when Pepsi applied a criminal background check policy that disproportionately excluded Black applicants from permanent employment. Under Pepsi's former policy, job applicants who had been arrested pending prosecution were not hired for a permanent job even if they had never been convicted of any offense." Additionally, "Pepsi's former policy also denied employment to applicants from employment who had been arrested or convicted of certain minor offenses. The use of arrest and conviction records to deny employment can be illegal under Title VII of the Civil Rights Act of 1964, when it is not relevant for the job, because it can limit the employment opportunities of applicants or workers based on their race or ethnicity."
- In December 2011, a New York City retail-wholesale fish market agreed to pay $900,000 and institute anti-discrimination measures to settle an EEOC lawsuit charging it with creating a hostile work environment for Black and African male employees. The lawsuit alleged that management at the company's Brooklyn facility routinely subjected more than 30 Black and African male loaders and drivers to sexual and racial harassment and retaliated against employees who complained. The harassment was both physical and verbal and included offensive comments based on race and national origin such as "nigger" and "African bastard" as well as explicit sexual expressions. The Commission also alleged that the company engaged in retaliation against workers who joined in the complaint. In addition to the monetary relief, M. Slavin agreed to submit to 5 years of monitoring by the EEOC; retain an independent EEO coordinator to investigate complaints; conduct one-on-one training for the worst harassers; and provide annual training for all staff. ***EEOC v. M. Slavin & Sons Ltd*., No. 09-5330 (E.D.N.Y. filed consent decree 12/15/11).**
- In December 2010, Roadway Express, a less-than-truckload motor carrier with terminals throughout North America, settled the claims of two lawsuits alleging racial harassment of Black employees and race discrimination in terms and conditions of employment at two Illinois facilities. The claims included: (1) awarding Black employees less favorable assignments (both terminals); (2) assigning them more difficult and demanding work (both terminals); (3) enforcing

break times more stringently (Chicago Heights); (4) subjecting their work to heightened scrutiny (Chicago Heights); and (5) disciplining them for minor misconduct (both terminals). Roadway also assigned Chicago Heights employees to segregated work groups. The 5-year decree, which applies to Roadway and YRC, Roadway's identity after it merged with Yellow Transportation, includes $10 million in monetary relief, $8.5 million to be paid upon preliminary approval of the decree and the remainder in three subsequent installments due on or before November 1 of 2011, 2012, and 2013. In addition to prohibiting race discrimination and retaliation against Black employees at YRC's Chicago Heights facility, the decree also requires YRC to provide all Chicago Heights employees annual training on racial harassment and race discrimination and engage a Work Assignment Consultant and a Disciplinary Practice Consultant to assist it in reviewing and revising the company's work assignment and disciplinary policies and practices at the Chicago facility. ***EEOC v. Roadway Express, Inc., and YRC, Inc.*, Nos. 06-CV-4805 and 08-CV-5555 and *Bandy v. Roadway Express, Inc., and YRC, Inc.*, No. 10-CV-5304 (N.D. Ill. Dec. 20, 2010)**.

- In October 2010, Austin Foam Plastics, Inc., (AFP) a producer and distributor of corrugated box and cushion packaging, agreed to pay $600,000 to resolve a number of racial and sexual harassment charges. In pertinent part, the EEOC alleged that Black employees at AFP were subjected to intimidation, ridicule, insults, racially offensive comments and jokes, and cartoons and images that denigrated African-Americans. White employees and managers regularly emailed racially derogatory jokes, cartoons, and other materials to coworkers, and posted racially offensive photographs on the bulletin board outside the human resources office. They also engaged in threatening and intimidating conduct toward Black employees, such as tampering with the brake lines and air hoses of one CP's truck. The 2-year consent decree also enjoins race and sex (male) discrimination under Title VII, as well as retaliation. Defendant will submit to EEOC an EEO policy that prohibits race and sex discrimination and retaliation. Defendant will file annual audit reports with the EEOC summarizing each complaint of race or sex (male) discrimination, or retaliation, it receives at its Pfluggerville, Texas location and its disposition. ***EEOC v. Austin Foam Plastics, Inc.,* No. 1:09-CV-00180 (W.D. Tex. Oct. 15, 2010)**.
- In September 2010, a mineral company agreed to pay $440,000 and other relief to settle a class race discrimination and retaliation lawsuit. Allegedly, the company disciplined an African-American quality control supervisor for having facial hair and using a cell phone during work, while Caucasian employees were not reprimanded for similar conduct. In addition to management subjecting the Black supervisor to heightened and unfair scrutiny, the company moved his office to the basement, while White employees holding the same position were moved to higher floors. Other African-American employees were subjected to racial harassment, such as a White supervisor placing a hangman's noose on a piece of machinery. ***EEOC v. Mineral Met, Inc.,* No. 1:09-cv-02199 (N.D. Ohio Sept. 23, 2010)**.
- In August 2010, the EEOC and the largest commercial roofing contractor in New York state settled for $1 million an EEOC suit alleging the company discriminated against a class of Black workers through verbal harassment, denials of promotion, and unfair work assignments. According to the lawsuit, EEOC alleged from at least 1993 to the present, a White foreman repeatedly used racial slurs toward Black workers, that the company assigned Black employees to the most difficult, dirty, and least desirable jobs, that the roofing contractor systematically excluded Black employees from promotion opportunities, and that the company retaliated against those who complained. Additionally, nooses were displayed and portable toilets featured racially offensive graffiti with swastikas and "KKK" references at the job sites, EEOC alleged. Although it admitted no wrongdoing and said that it settled the case for financial reasons, the company agreed to hire an equal employment opportunity coordinator to provide

employee EEO training, monitor future race discrimination complaints, and file periodic reports with EEOC regarding hiring, layoffs, and promotions. ***EEOC v. Elmer W. Davis Inc.,* No. 07-CV-06434 (W.D.N.Y. consent decree filed Aug. 10, 2010)**.

- In December 2009, a national grocery chain paid $8.9 million to resolve three lawsuits collectively alleging race, color, national origin and retaliation discrimination, affecting 168 former and current employees. According to the lawsuits, minority employees were repeatedly subjected to derogatory comments and graffiti. Blacks were termed "n-----s" and Hispanics termed "s---s;" offensive graffiti in the men's restroom, which included racial and ethnic slurs, depictions of lynchings, swastikas, and White supremacist and anti-immigrant statements, was so offensive that several employees would relieve themselves outside the building or go home at lunchtime rather than use the restroom. Black and Hispanic employees also were allegedly given harder work assignments and were more frequently and severely disciplined than their Caucasian co-workers. Lastly, EEOC asserted that dozens of employees complained about the discriminatory treatment and harassment and were subsequently given the harder job assignments, were passed over for promotion and even fired as retaliation. ***EEOC v. Albertsons LLC*, Civil Action No. 06-cv-01273, No. 08-cv-00640, and No. 08-cv-02424 (D. Colo 2009).**
- In May 2009, an Illinois construction company agreed to pay $630,000 to settle a class action race discrimination suit, alleging that it laid off Black employees after they had worked for the company for short periods of time, but retained White employees for long-term employment. The three-year consent decree also prohibits the company from engaging in future discrimination and retaliation; requires that it implement a policy against race discrimination and retaliation, as well as a procedure for handling complaints of race discrimination and retaliation; mandates that the company provide training to employees regarding race discrimination and retaliation; and requires the company to provide periodic reports to the EEOC regarding layoffs and complaints of discrimination and retaliation. ***EEOC v. Area Erectors, Inc.*, No. 1:07-CV-02339 (N.D. Ill. May 29, 2009).**
- In August 2008, a tobacco retail chain agreed to pay $425,000 and provide significant remedial relief to settle a race discrimination lawsuit on behalf of qualified Black workers who were denied promotion to management positions. The three-year consent decree also requires the company, which has stores in Arkansas, Missouri, and Mississippi, to train all managers and supervisors on preventing race discrimination and retaliation; create job descriptions for manager and assistant manager positions that outline the qualifications for each position; develop a written promotion policy that will include the procedures by which employees will be notified of promotional opportunities; report assistant manager and manager vacancies, the name and race of all applicants for the position, and the name of the successful candidate; report the names of all African Americans who are either hired or promoted to manager or assistant manager positions; and report any complaints of race discrimination and describe its investigation in response to the complaint. ***EEOC v. Tobacco Superstores, Inc.*, No. 3:05 CV 00218 (E.D. Ark. settled Aug. 2008).**
- In July 2008, a Chicago-based leading chemical manufacturer of high-quality surfactants, polymers, chemical specialties and cosmetic preservatives paid $175,000 to settle a class race discrimination and retaliation lawsuit filed by the EEOC. According to the lawsuit, a class of African American employees had been subjected to race discrimination, racial harassment, and retaliation for complaining about the misconduct. The company agreed to conduct EEO training and refrain from future acts of discrimination and retaliation. ***EEOC v. McIntyre Group, Ltd.*, No. 07 C 5458 (N.D. Ill. settled July, 2008)**.

- In May 2008, the EEOC obtained a settlement of $1.65 million in a racial harassment case filed against a general contractor and its subsidiaries on behalf of a class of African American employees who were subjected to egregious racial harassment at a construction site in Bethlehem, Pennsylvania. The harassment included a life size noose made of heavy rope hung from a beam in a class member's work area for at least 10 days before it was removed; the regular use of the "N-word"; racially offensive comments made to Black individuals, including "I think everybody should own one" and "Black people are no good and you can't trust them" and "Black people can't read or write." Additionally, racist graffiti was written in portable toilets, with terms such as "coon"; "if u not White u not right"; "White power"; "KKK"; and "I love the Ku Klux Klan." Additional remedies were injunctive relief enjoining each defendant from engaging in racial harassment or retaliation; anti-discrimination training; the posting of a notice about the settlement; and reporting complaints of racial harassment to the EEOC for monitoring. ***EEOC v. Conectiv*****,et al. Civil Action No. 2:05-cv-00389 (E.D. Pa. settled May 5, 2008)**.
- In August 2007, a renowned French chef agreed to pay $80,000 to settle claims that his upscale Manhattan restaurant discriminated against Hispanic workers and Asian employees from Bangladesh in job assignments. The aggrieved employees alleged that they were restricted to "back of the house" positions such as busboys and runners and refused promotions to "front of the house" positions such as captains, which instead went to Caucasian workers with less experience and seniority. They also alleged that they were subjected to racial insults and harassment when they complained. ***EEOC v. Restaurant Daniel,*** **No. 07-6845 (S.D.N.Y. August 2, 2007)**.
- In June 2007, EEOC obtained $500,000 from a South Lyon, Mich., steel tubing company, which, after purchasing the assets of its predecessor company, allegedly refused to hire a class of African American former employees of the predecessor. Though the company hired 52 of its predecessor's former employees, none of them were Black. EEOC charged that many of the White employees hired had significantly less experience than the Black former employees represented by the EEOC, and in some cases had actually been trained by the same African American employees who were denied hire. The suit also included other Black applicants who were denied hire in favor of less qualified White applicants. ***EEOC v. Michigan Seamless Tube*****, No. 05-73719 (E.D. Mich. June 8, 2007)**.
- In February 2007, EEOC obtained a $5 million settlement resolving two consolidated class action employment discrimination lawsuits against a global engine systems and parts company, asserting that the company engaged in illegal discrimination against African-Americans, Hispanics and Asians at its Rockford and Rockton, Ill., facilities with respect to pay, promotions and training. ***EEOC v. Woodward Governor Company,*** **No. 06-cv-50178 (N.D. Ill. Feb. 2007).**
- In August 2006, the Commission settled this Title VII lawsuit alleging that since at least 1991, defendant, a manufacturer of precision metal-formed products and assemblies, failed to hire women and Blacks into laborer and machine operator positions at its plant because of their sex and race for $940,000. The complaint also alleged that defendant failed to retain employment applications. The 39-month consent decree requires defendant to consider all female and Black applicants on the same basis as all other applicants, to engage in good faith efforts to increase recruitment of female and Black applicants, and to submit semiannual reports to EEOC that include applicant flow and hiring data by race and sex. ***EEOC v. S&Z Tool Co., Inc.,*** **No. 1:03CV2023 (N.D. Ohio Aug. 16, 2006)**.
- In August 2006, a major national public works contractor paid $125,000 to settle race, gender, national origin and religious discrimination and retaliation lawsuits brought by EEOC on behalf of a class of Black, Asian, and female electricians who were subjected to daily harassment due to

their race, national origin, and/or gender by their immediate foremen, racial and otherwise offensive graffiti in plain sight at the workplace, and retaliation for complaining. ***EEOC v. Amelco,* No. C 05-2492 MEJ (N.D. Cal. Aug. 22, 2006).**

- In June 2005, EEOC obtained an $8 million dollar settlement from Ford Motor Co. and a major national union in a class race discrimination lawsuit, alleging that a test had a disproportionately negative impact on African American hourly employees seeking admission to an apprenticeship program. **See** http://www.eeoc.gov/press/6-1-05.html.
- In November 2004, the Commission settled for $50 million a lawsuit filed against Abercrombie & Fitch on behalf of a class of African Americans, Asian Americans, Latinos, and women allegedly subjected to discrimination in recruitment, hiring, assignment, promotion and discharge based on race, color, national origin, and sex. Abercrombie & Fitch also agreed to improve hiring, recruitment, training, and promotions policies; revise marketing material; and select a Vice President of Diversity and diversity recruiters. ***EEOC v. Abercrombie & Fitch Stores, Inc.*, No. CV-04-4731 (N.D. Cal. Nov. 10, 2004).**
- In November 2002, the Commission settled a lawsuit with the Las Vegas hotel for more than $1 million on behalf of African American and Hispanic applicants who were allegedly were not hired for server positions because of their race. The hotel also agreed to conduct antidiscrimination training and implement procedures to investigate discrimination complaints. ***EEOC v. The Mirage Hotel & Casino*, No. CV S-02-1554 RLH - LRL (D.Nev. Nov. 27, 2002).**

Youth@ Work

- In September 2006, the Korean owners of a fast food chain in Torrance, California agreed to pay $5,000 to resolve a Title VII lawsuit alleging that a 16-year old biracial girl, who looked like a fair-skinned African American, was refused an application for employment because of her perceived race (Black). According to the EEOC lawsuit, after a day at the beach with her Caucasian friends, the teen was asked if she would request an application on her friend's behalf since the friend was a little disheveled in appearance. The owner refused to give the teen an application and told her the store was not hiring anymore despite the presence of a "Help Wanted" sign in the window. After consultation among the friends, another White friend entered the store and was immediately given an application on request. ***EEOC v. Quiznos*, No. 2:06-cv-00215-DSFJC (C.D. Cal. settled Sept. 22, 2006).**
- In December 2005, EEOC resolved this Title VII lawsuit alleging that a fast food conglomerate subjected a Black female employee and other non-White restaurant staff members (some of them minors) to a hostile work environment based on race. The racial harassment included a male shift leader's frequent use of "nigger" and his exhortations that Whites were a superior race. Although the assistant manager received a letter signed by eight employees complaining about the shift leader's conduct, the shift leader was exonerated and the Black female employee who complained was fired. The consent decree provided $255,000 in monetary relief: $105,000 to Charging Party and $150,000 for a settlement fund for eligible claimants as determined by EEOC. ***EEOC v. Carl Karcher Enterprises, Inc., d/b/a Carl's Jr. Restaurant*, No. CV-05-01978 FCD PAW (E.D. Cal. Dec. 13, 2005).**
- In October 2005, an elevator manufacturing company agreed to pay $75,000 to an 18-year-old African American welder and $100,000 to 12 other Black employees in an EEOC suit alleging racial harassment of the teen and a pattern of discrimination against African American employees at the Middleton, Tennessee facility. Harassment of the teen included calling him a

"Black [S.O.B.]," telling racially offensive jokes, hiding his safety gloves, placing stink bombs under his workstation, and telling him that the vending machines do not take "crack money." ***EEOC v. Thyssenkrupp Elevator Manufacturing, Inc.,*** **Civil Action No. 03-1160-T (W.D. Tenn. Oct. 2005).**

- In September 2005, EEOC obtained a $34,000 default judgment on behalf of a then 19-year old Black former employee of a manufacturing plant in Illinois who alleged that he had been subjected to derogatory remarks and racial epithets, such as "what are you supposed to be, some kind of special nigger?" or name-calling such as "pencil dick," by his supervisor. The supervisor was the father of the company's president and he insisted that the "n-word" is Latin for "Black person." When the teen complained to the company president about the offensive remarks, the supervisor's son replied that he could not reprimand his father. ***EEOC v. Midwest Rack Manufacturing, Inc.*****, No. 05-194-WDS (S.D. Ill. Sep. 21, 2005).**
- In March 2004, a Ruby Tuesday franchise agreed to pay $32,000 to resolve an EEOC lawsuit, alleging race discrimination in hiring against two African American college students who were refused employment as food servers in favor of several Caucasian applicants with less or similar experience and qualifications. According to the lawsuit, when the students met with the store manager, he briefly reviewed their applications and told them they were "not what he was looking for." ***EEOC v. RT KCMO, LLC d/b/a Ruby Tuesday's*****, No.03-CV-00983-FJG (W.D. Mo. settled March 30, 2004).**
- In February 2004, the Commission settled a racial and sexual harassment lawsuit for $67,000 plus injunctive relief on behalf of two Black young female employees who alleged that they were subjected to unwelcome touching, degrading sexual and racial comments, and were shown a drawing of a Ku Klux Klan member by their supervisor. After one of the women complained, her hours were cut and she was eventually terminated. The other employee was forced to resign. ***EEOC v. Planet Wings of Rockland, Inc.*****, No. 03 CV 5430 (S.D.N.Y. Feb. 4, 2004).**

Employment Practices

Hiring

- In February 2020, a northern Indiana vending and coffee service provider paid $22,000 and provided other significant relief to resolve an EEOC race discrimination lawsuit alleging that the company discriminated against a Black applicant in filling vending service representative positions. *EEOC v. Coffel Vending Co.*, Case No. 3:19-cv-00596-PPS-MGG (N.D. Ind. Feb. 25, 2020).
- In August 2019, Pier 1 Imports paid a $20,000 settlement to a Black job applicant in San Bernardino County who was denied an assistant manager position based on his race following a background check pursuant to a two-year conciliation agreement. As part of the agreement terms, the company admitted no liability, and Pier 1 Imports agreed to revise its policies, which include eliminating its background screening processes and removing the question about convictions from its job application. The EEOC will monitor the company’s compliance with the agreement.
- In August 2016, an Illinois-based payroll and human resource services firm agreed to a $1.4 million settlement of charges that the company discriminated against Black and Hispanic job applicants and employees. ADP LLC, under a conciliation agreement signed before any lawsuit was filed, also will enhance its recruitment, hiring and promotion of racial minorities, the EEOC

announced July 29. ADP in resolving the charges didn't admit it engaged in any violations of Title VII of the 1964 Civil Rights Act..

- In March 2016, a manufacturing company based in New Ulm, Minn., paid $19,500 to settle a race discrimination lawsuit filed by the EEOC, alleging that Windings, Inc. violated Title VII of the Civil Rights Act of 1964 when it refused to hire a biracial (African-American and White) applicant for a vacant assembler position, and instead hired a White applicant. According to EEOC's lawsuit, Kimball applied for a vacant assembler job and interviewed with the company in January 2014. The applicant was qualified for the job as he passed the job-related assessment tests, and had previous work experience as an assembler. In addition to the monetary relief, the two-year consent decree requires Windings to use hiring procedures to provide equal employment opportunity to all applicants including posting vacancy announcements and job listings on its website, and not solely rely on word-of-mouth recruitment or employee referrals. Windings also will use objective standards for hiring, guidelines for structured interviews, and will document interviews. Windings adopted a written affirmative action plan, and will seek out applications from qualified minority applicants, including African-Americans. Also, Windings agrees to participate in job fairs and recruiting events that target Black Americans and to provide EEOC with reports of its applicants, hiring and specific reasons why applicants were not selected during the decree's term. ***EEOC v. Windings, Inc***., Civil Action No. 15-cv-02901 (D. Minn. consent decree filed Mar. 18, 2016).
- In September 2015, Cabela's Inc., an outdoor recreation merchandiser based in Sidney, Nebraska with 60 retail stores in 33 states, agreed to take nationwide measures to increase the diversity of its workforce to settle EEOC's allegations that the company discriminated in recruitment and hiring of minorities. The settlement agreement resolves an EEOC commissioner's charge filed against the company. Under the agreement, Cabela's is required to appoint a diversity and inclusion director who will report directly to the company's chief administrative officer and set hiring goals designed to achieve parity in the hiring rates of white and minority job applicants. The agreement also requires Cabela's to make equal employment opportunity compliance a component in the performance evaluation of managers and supervisors, to update its EEO policies, and provide annual training on EEO issues for all employees.
- In April 2015, a federal judge denied a motion to dismiss a claim of racial discrimination in hiring against Rosebud Restaurants, the U.S. Equal Employment Opportunity Commission (EEOC) announced today. In its complaint, the EEOC charged that the Chicago-area Italian restaurant chain violated federal civil rights laws by refusing to hire African-Americans because of their race. The company's motion to dismiss argued that the EEOC's complaint should be dismissed because it did not identify the victims of the alleged hiring discrimination. the court rejected that argument, concluding that the EEOC's "allegations of intentional discrimination are sufficient to state a claim for Title VII relief . . . even in the absence of the identification of an individual job applicant who was rejected because of his race." ***EEOC v. Rosebud Restaurants, Inc.*, Civil Action No. 13-cv-6656 (N.D. Ill. decision filed Apr. 7, 2015)**.
- In September 2014, the EEOC appealed the dismissal of its race discrimination complaints alleging that an employer's withdrawal of a job offer from a qualified Black applicant because she refused to cut off her dreadlocks constituted race discrimination under Title VII. On the appeal, the Commission contends that the district court improperly dismissed its original and amended complaints because they stated plausible claims of intentional discrimination. Specifically, the Commission argued that the employer's application of its grooming policy to prohibit dreadlocks discriminates on the immutable trait of racial hair texture, violates the

fundamental right to freedom of racial expression, and promotes unlawful racial stereotyping. ***EEOC v. Catastrophe Mgmt. Solutions*, No. 14-13482 (11th Cir. Brief filed Sept. 22, 2014)**.

- In June 2013, the EEOC and J.B. Hunt Transport Inc. settled a race discrimination charge alleging the nationwide transportation company engaged in unlawful race discrimination by rejecting a Black truck driver applicant because of a prior criminal conviction unrelated to his prospective job duties. The settlement follows conciliation of an EEOC charge under Title VII of the 1964 Civil Rights Act over claims that an African-American job candidate was denied a truck driver position at a J.B. Hunt facility in San Bernardino, Calif., in 2009 based on a criminal conviction record, which the EEOC contends was unrelated to the duties of the job. The federal agency also reviewed the company's broader policy with respect to the hiring of job applicants with conviction records. Blanket prohibitions are not in accordance with the agency's policy guidance on the subject, which was reissued on April 25, 2010. The EEOC's guidance recommends evaluating: the nature and gravity of the offense or conduct; the time that has passed since the conviction and/or completion of the sentence; and the nature of the job sought prior to disqualifying a candidate with such a record. J.B. Hunt also reached a private settlement with the alleged discrimination victim, who filed an EEOC charge after being denied a job at J.B. Hunt's San Bernardino, Calif., facility in 2009. As part of a five-year conciliation agreement, J.B. Hunt agreed to review and, if necessary, revise its hiring and selection policies to comply with EEOC's April 2012 enforcement guidance regarding employers' use of arrest and conviction records. The EEOC will monitor compliance with the conciliation agreement. The EEOC entered into a pre-suit conciliation agreement.
- In November 2012, Alliant Techsystems Inc. paid $100,000 to settle an EEOC suit alleging that the company violated Title VII when it refused to hire an African-American woman for a technical support job at its offices in Edina because of her race. According to the lawsuit, the alleged victim applied and was interviewed several times for the job in May 2007. After the first interview, the recruiter allegedly advised her to take out her braids to appear more professional. She did so and purportedly was later told by the recruiter that Alliant wanted to hire her and that she would be contacted by the company's Human Resources Department. However, by the time she met with the company's information technology director, she had put her braids back in. The next day, she was informed that she would not be hired. In June 2007, the company hired a White male for the IT job. The 3-year consent decree, which applies to the company's headquarters in Minnesota and Virginia, enjoins Alliant from further discriminating in hiring based on race and from retaliating against persons who oppose practices made unlawful under Title VII. Additionally, the company will review its workplace policies to assure that they comply with Title VII and will train its entire staff on the laws against discrimination. ***EEOC v. Alliant Techsystems Inc.,*** Case No. 0:11-cv-02785-DSD-JJG (D. Minn. consent decree filed Nov. 20, 2012).
- In April 2012, Bankers Asset Management Inc. agreed to pay $600,000 to settle an EEOC lawsuit alleging that the real estate company excluded Black applicants from jobs at the company's Little Rock location based on their race. The firm also allegedly retaliated against other employees and former employees for opposing or testifying about the race discrimination by demoting and forcing one worker out of her job and by suing others in state court. In addition to paying $600,000, the three-year consent decree settling the lawsuit also requires Bankers Asset Management to hold a mandatory, annual three-hour training on race discrimination and retaliation in which its president or another officer participates, among other provisions. ***EEOC v. Bankers Asset Mgmt. Inc.*, Civil Action No. 4:10-CV-002070-SWW (E.D. Ark.Apr. 18, 2012).**

- In February 2012, the owners of Piggly Wiggly supermarkets in Hartsville and Lafayette, Tenn., agreed to pay $40,000 to settle a race and gender discrimination lawsuit filed by the EEOC. In its lawsuit, the EEOC asserted that the Piggly Wiggly locations owned by MWR Enterprises Inc. II violated federal law by maintaining policies and practices that intentionally failed to hire African-Americans because of their race for positions at the company's Piggly Wiggly store in Hartsville and Lafayette. The EEOC further charged that the company maintained a segregated work force and an established practice of not hiring males for cashier positions at the same locations. The four-year consent decree also requires Defendant MWR Enterprises Inc., II, to establish a written policy which provides that all job assignments will be made without consideration to gender; establish guidelines and procedures for processing employment applications; provide Title VII training on race and gender discrimination to its managers; meet recordkeeping and reporting requirements; and post a notice about the lawsuit and settlement at its store locations. ***EEOC v. MWR Enterprises Inc., II*, C.A. No. 3:10-cv-00901 (M.D. Tenn. Feb. 23, 2012).**
- In January 2012, a Johnson City, N.Y -based cleaning company agreed to pay $450,000 to 15 former employees to settle a hiring discrimination and retaliation case. According to an EEOC lawsuit filed in September 2011 in a federal court in Pennsylvania, the executives of the cleaning company prohibited a White supervisor from hiring Black employees for a client in Concordsville, PA. The supervisor continued to hire qualified Black workers, and later was fired for defying her managers' instructions. The EEOC also alleged that the company forced Black workers at the Concordville worksite to sit in the back of the cafeteria during breaks, and ultimately barred them from the cafeteria altogether The company later fired the entire crew, replacing them with all non-Black workers. The EEOC filed a lawsuit seeking relief for the terminated supervisor and Black employees. In addition to the monetary relief, the company agreed to providing EEO training for its managers and supervisors the company and to submit a follow-up report on remedial measures being taken at the Concordville worksite. ***EEOC v. Matrix L.L.C.*, Civil Action No. 2:11-cv-06183 (E.D. Pa. Jan. 6, 2012).**
- In January 2012, a marine construction and transportation company located in Dyersburg, Tenn., will pay an African-American job applicant $75,000 to settle a racial discrimination lawsuit filed by the EEOC. According to the EEOC's lawsuit, the company refused to hire a Black job applicant for a deckhand position because of his race in violation of Title VII. In addition to the monetary relief, a three-year consent decree requires the company to use its best efforts to fill up to 25 percent of available positions with African-Americans. Choctaw has also been ordered to maintain records of discrimination complaints, provide annual reports to the EEOC, and post a notice to employees about the lawsuit that includes the EEOC's contact information. ***EEOC v. Choctaw Transp. Co., Inc.*, 1:10-cv-01248-JDB-egb (W.D. Tenn. Jan. 19, 2012).**
- In September 2011, the EEOC filed suit against Bass Pro Outdoor World, LLC, alleging that the nationwide retailer of sporting goods, apparel, and other miscellaneous products has been discriminating in its hiring since at least November 2005. The EEOC's suit alleged that qualified African-Americans and Hispanics were routinely denied retail positions such as cashier, sales associate, team leader, supervisor, manager and other positions at many Bass Pro stores nationwide and that managers at Bass Pro stores in the Houston area, in Louisiana, and elsewhere made overtly racially derogatory remarks acknowledging the discriminatory practices, including that hiring Black candidates did not fit the corporate profile. The lawsuit also claims that Bass Pro punished employees who opposed the company's unlawful practices, in some instances firing them or forcing them to resign. ***EEOC v. Bass Pro Outdoor World, LLC*, Civil Action No. 4:11-cv-03425 (S.D. Tex. Sep. 21, 2011).**

- In March 2011, a federal district court in Maryland rejected a novel attempt by a national restaurant chain to block the EEOC from airing radio spots seeking Black individuals who applied for a job or worked at the chain's Baltimore location, in connection with its race bias suit against the restaurant. ***EEOC v. McCormick & Schmick's Seafood Rests. Inc.***, **No. 1:08-cv-00984 (D. Md. motion denied Mar. 17, 2011)**.
- In December 2010, the EEOC filed a race discrimination and retaliation suit against a real estate brokerage and management company alleging that the company refused to hire numerous Black applicants and then retaliated against other employees or former employees for opposing the race discrimination. The lawsuit seeks back pay, compensatory and punitive damages, instatement or reinstatement as well as an injunction against future discrimination and retaliation. ***EEOC v. Cry-Leike, Inc.***, **Civil Action No. 4:10-CV-002070 (E.D. Ark. Dec. 30, 2010)**.
- In November 2010, a Chicago janitorial services provider agreed to pay $3 million to approximately 550 rejected Black job applicants under a four-year consent decree, settling the EEOC's allegations of race and national origin discrimination in recruitment and hiring. The EEOC had alleged that the provider had recruited through media directed at Eastern European immigrants and Hispanics and hired people from those groups over African Americans, and that the provider's use of subjective decisionmaking had a disparate impact on African Americans. As part of the decree, the provider also agreed to extensive changes in its employment policies, to engage in "active recruitment" of African American employees, to hire previously rejected Black applicants, to implement training on discrimination and retaliation, and to hire an outside monitor to review compliance with the decree. ***EEOC v. Scrub Inc.,*** **No. 09 C 4228 (N.D. Ill. consent decree entered Nov. 9, 2010)**.
- In June 2010, the EEOC obtained a ruling by the Ninth Circuit that permits the Commission to pursue injunctive relief to stop a coal company mining in the Navajo Nation from discriminating in employment against non-Navajo Indians. In this Title VII case, EEOC claimed mineral lease provisions that require companies mining on the Navajo reservation in Arizona to give employment preferences to Navajos are unlawful. By honoring those provisions and refusing to hire non-Navajo Indians, Peabody discriminates based on national origin, in violation of Title VII of the 1964 Civil Rights Act, EEOC asserted. EEOC also can proceed with efforts to secure an injunction against future enforcement of the Navajo hiring preference, the court added. Should a court find a Title VII violation and issue such an injunction, Peabody and the Navajo Nation could file a third-party complaint against the Interior Secretary under Rule 14(a) to prevent the Secretary from seeking to enforce the lease provisions or cancel the leases, it said. ***EEOC v. Peabody W. Coal Co.*****, No. 06-17261 (9th Cir. June 23, 2010).**
- In January 2010, an international investment management firm based in Malvern, Pennsylvania settled for $300,000 the EEOC's Title VII lawsuit, alleging that the firm failed to hire an African American female applicant for a financial planning manager position at defendant's Charlotte, North Carolina office because of her race. She was the only African American among four candidates, and according to the EEOC, had met or exceeded all requirements for the job, had received highly favorable comments as she progressed through defendant's interview process, which included multiple in-person and telephone interviews with high level managers, as well as an in-person assessment by a third party on matters such as personality and aptitude. Additionally, at the conclusion of her final interview, defendant's managing director allegedly told the Black applicant she was "obviously qualified for the position." The firm, however, offered the job to two less qualified White applicants -- the first declined and the second accepted. The 2-year consent decree also enjoins the firm from making hiring decisions based

on race and prohibits retaliation. ***EEOC v. Vanguard Group, Inc.*, No. 09-04424 (E.D. Pa. Jan. 4, 2010)**.

- In March 2009, a manufacturer and distributor of foodservice equipment has offered permanent employment to an African American applicant and furnished other relief to resolve a race discrimination lawsuit alleging that the company refused to hire the Black applicant into a permanent position at its Fayetteville, Tenn., facility because he disclosed a felony conviction on his application - even though the company hired a White applicant a year earlier who made a similar disclosure. ***EEOC v. Franke, Inc., dba Franke Foodservice Systems*, No. 3:08-cv-0515 (M.D. Tenn. Mar. 26, 2009).**
- In October 2008, a department store chain in Iowa entered a consent decree agreeing to pay $50,000 and to provide other affirmative relief. EEOC had alleged that the store chain refused to hire qualified Black job applicants for sales, truck driver and other positions in its retail or warehouse facilities for reasons that were not applied to successful White applicants. In addition to the monetary relief, the consent decree requires the store chain to post a remedial notice, provide semi-annual training to managers and supervisors on employee and applicant rights under Title VII and employer obligations under Title VII, and report applicant data and any future complaints related to racial discrimination to the EEOC. ***EEOC v. Von Maur*, No. 06-CV-182 (S.D. Iowa Apr. 19, 2006 settled Oct. 29, 2008)**.
- In July 2008, EEOC resolved a race discrimination and retaliation suit for $140,000 against a Mississippi U-Haul company. The company was accused of discriminating on the basis of race when it hired the son of a selecting official rather than a veteran African American manager, to serve as the company's marketing company president. The Black manager had worked for U-Haul for ten years as a reservation manager, assistant manager, general manager, area field manager and field relief manager, and held a bachelor's degree in business manage¬ment as well as having received various awards for performance. The company, however, altered the job's requirements and hired the executive's son who lacked a college degree and had scanty experience compared with the Black manager. The manager complained and the company disciplined and fired him. The company has agreed to adopt an online employee handbook and other documents spelling out company policies and practices; to post all vacancies for marketing company president; to provide training on discrimination and retaliation to all board members; and to provide periodic reports to the EEOC. ***EEOC v. U-Haul Co. of Mississippi,* Civil Action No. 3:06cv516 (S.D. Miss. filed July 2008).**
- In June 2008, a beauty supply chain agreed to pay $30,000 to settle a race discrimination lawsuit in which the EEOC charged that it rescinded a job offer after learning the successful applicant was Black. In a deposition, the former acting store manager of the West Orange store gave sworn testimony that she had a telephone conversation with the district manager after the applicant had applied, and the district manager "told [me] she didn't want another Black person working in the store." When the selectee arrived at the store on her starting date, she was informed that she could not be hired due to her race because there would have been too many African Americans at the store. ***EEOC v. Sally Beauty Supply LLC*, Civil Action No. 1:07cv644 (E.D. Tex. settled June 23, 2008).**
- In September 2007, EEOC upheld an Administrative Judge's (AJ) default judgment in favor of complainant, a Staff Nurse Supervisor, who had alleged race discrimination when she was not selected for a Nurse Manager position. The AJ sanctioned the agency for failing to timely investigate the complaint. Relief included retroactive promotion, back pay and a tailored order to allow complainant to submit her request for fees incurred solely for the successful

prosecution of the appeal. ***Royal v. Department of Veterans Affairs,* EEOC Appeal No. 0720070045 (Sep. 10, 2007).**

- In January 2007, the Commission found discrimination based on race (African-American) when a federal employee was not selected for the position of Criminal Investigator despite plainly superior qualifications as compared to the selectee. The manager who recommended the selectee, ignored complainant's qualifications and was reported to have previously told another African-American applicant that his "Black ass would never become a special agent." The Commission affirmed the AJ's finding of discrimination and ordered the retroactive promotion of complainant, back pay, compensatory damages ($75,000), attorney's fees, and other relief. ***Green v. Department of Homeland Security*, EEOC Appeal No. 0720060058 (January 19, 2007).**
- In November 2006, the Commission found that a federal employee had been discriminated against based on his race (Asian/Pacific Islander) when he was not selected for the position of Social Insurance Specialist. The Commission affirmed the AJ's finding that the agency's articulated reason for failing to select complainant -- the selectee was "highly recommended" to the selecting official -- was not worthy of belief since complainant was "definitely recommended" and that discrimination more likely motivated the agency's decision. The Commission ordered the retroactive promotion of complainant, back pay, compensatory damages ($5,000), attorney's fees, and other relief. ***Paras v. SSA*, EEOC Appeal No. 0720060049 (November 6, 2006).**
- In August 2006, a federal appellate court in Illinois reversed a negative trial court ruling and decided that the EEOC had produced sufficient evidence to proceed to trial in its race discrimination case against Target Corporation, a major retailer. According to the lawsuit, an interviewing official for the company refused to schedule interviews for four Black applicants seeking entry-level management positions because of their race. The Commission's evidence included inculpatory tester evidence and expert testimony indicating that the names and voices of the Black applicants, as well as some of the organizational affiliations (e.g. Alpha Kappa Alpha Sorority, Inc.) disclosed on their resumes, could have served as proxies for race. ***EEOC v. Target Corporation*, 460 F.3d 946 (7th Cir. 2006).**

Customer/Patient Preference

- In September 2019, Lexington Treatment Associates, a Delaware-based limited liability company that owns and operates methadone clinics in North Carolina, paid $110,000 and provided other relief to settle a racial harassment lawsuit brought by the EEOC. The EEOC had charged that the company violated Title VII when it subjected three Black employees at its Lexington, N.C., facility to a racially hostile work environment. According to the EEOC's lawsuit, from February 2017 to at least July 2018, Treatment Centers subjected a Substance Abuse Counselor Allen Parson and two other African American employees were repeatedly and openly subjected to racial slurs by several clients of the facility and race-based counselor assignments to accommodate White clients' racial preferences not to be assigned to Black counselors. *EEOC v. Treatment Centers, LLC d/b/a Lexington Treatment Assocs.*, Civil Action No.1:19-cv-00933 (M.D.N.C. Sep. 12, 2019).
- In September 2013, Hurley Medical Center entered into a 5-year agreement with the EEOC to settle its lawsuit alleging that a White father reportedly demanded no African-American nurses treat his newborn baby. Four nurses filed discrimination lawsuits after a Hurley staff member allegedly posted a note with the father's instructions. Pursuant to the agreement, the EEOC will conduct non-discrimination training for all Hurley staff each year and will examine any progress

made to see if more needs to be done. Hurley also agreed to pay about $200,000 in March to settle a lawsuit filed by three nurses. Hurley also agreed to pay about $200,000 in March to settle a lawsuit filed by three nurses. "In the Matter of U.S. Equal Employment Opportunity Commission and Tonya Battle, Charging Party, and Hurley Medical Center, Respondent," Detroit Field Office, September 26, 2013. See also Resolution Agreement between the U.S. Department of Health and Human Services Office for Civil Rights and Hurley Medical Center, 13-156114, (July 31, 2014 available at http://www.hhs.gov/ocr/civilrights/activities/agreements/hurley.html).

- In December 2010, a company which provides in-home care certified nursing assistants (CNAs) and non-CNAs to seniors in Anne Arundel County and Howard County, Maryland agreed to settle claims alleging that it discriminated based on race in assigning caregivers. According to the EEOC's lawsuit, the company coded the preferences of clients who requested White caregivers, and made assignments based on the preferences. For example, "circle dots" referred to the clients that preferred Caucasian caregivers. The facility claimed that it ceased the coding practice in 2008, but admitted that it continued to take client racial preferences into account in making caregiver assignments. The 5-year consent decree provides $150,000 in compensatory damages to be distributed to claimants (defined as all caregivers employed by defendant from October 2007 through entry of the decree) in amounts determined by EEOC based on length of service and employment status. The decree enjoins the company from racial coding and prohibits race-based caregiver assignments. The injunction survives the decree. Where a client indicates a preference not to have a caregiver of a certain race, and there is a risk that the client will become violent, the facility will notify the caregiver, who can choose to refuse the assignment. The company also will provide 2 hours of training annually to recruiters and HR personnel on Title VII, with a special emphasis on the discriminatory assignment of caregivers based on the racial preferences of clients.***EEOC v. HiCare, Inc., dba Home Instead Senior Care*, No. 1:10-CV-02692 (D. Md. Dec. 10, 2010)**.
- In July 2010, Plaintiff Brenda Chaney and the EEOC as amicus curiae obtained a reversal of a summary judgment in favor of an employer in a Title VII case that "pit[ted] a [Black] health-care worker's right to a non-discriminatory workplace against a patient's demand for [W]hite-only health-care providers." In this race-based action, an Indiana nursing home housed a White resident who did not want any assistance from Black health-care staff. The facility complied with the patient's request by informing Plaintiff "in writing everyday that 'no Black' assistants should enter this resident's room or provide her with care." Plaintiff filed suit alleging that the facility's acquiescence to the racial biases of its residents is illegal and created a hostile work environment. She also asserted that her termination was racially motivated. On appeal, the Seventh Circuit unanimously rejected the facility's argument that Indiana's patient-rights law permitted such practice and remanded the case for trial because the "the racial preference policy violates Title VII by creating a hostile work environment and because issues of fact remain over whether race motivated the discharge." ***Chaney v. Plainfield Healthcare Center*, 612 F .3d 908 (7th Cir. 2010).**
- In December 2007, a Minnesota-based frozen food home delivery service agreed to pay $87,250 and provide Title VII training to settle an EEOC race discrimination case alleging that the company discriminated against qualified African-American job applicants at its Missouri facility. EEOC alleged that the company refused to hire Black applicants because it was concerned that its customers would be uncomfortable with a Black man coming to their home and would be intimidated by him. Consequently, despite promising the Black applicant he would be hired for a warehouse position, the company hired a less qualified White applicant. ***EEOC v. Schwan's Home Services, Inc.*, No. 4:07-CV-00221-AGF (E.D. Mo. settled Dec. 17, 2007)**.

- In April 2007, a Pennsylvania hot dog franchise entered a consent decree with the EEOC agreeing to pay $7,500, to post a remedial notice in the restaurant, to semi-annually report on any future complaints alleging racial discrimination to the EEOC for a period of four years, and to provide Title VII training to all supervisors and managers. In its lawsuit, the EEOC alleged that the franchise ordered the store manager to fire the African American employees because the student patrons did not like to be waited on by them. After firing several of the Black employees, the store manager resigned in protest and the general manager fired the remaining African American employees himself. The consent decree also enjoins The Original Hot Dog Shop from creating, tolerating, or fostering a hostile work environment based on race.***EEOC v. The Original Hot Dog Shop*, No. 06-CV-1243-JFC-RCM (W.D. Pa. Apr. 19, 2007)**.
- In October 2005, the EEOC obtained $650,000 for named claimants and an additional $70,000 for "unknown class members" in a Title VII lawsuit alleging that the owner of assisted living and other senior facilities in 14 states engaged in discriminatory hiring practices based on race and/or color. Specifically, the lawsuit alleged that defendant's former general manager refused to hire Blacks and other non-Caucasian applicants into nursing support, food service, and housekeeping positions at an assisted living facility and coded the applications of minority applicants because she believed residents preferred White employees and did not want minorities to come into their rooms. Additionally, defendant failed to retain employment applications as required by EEOC's regulations implementing section 709(c) of Title VII. Pursuant to a 42-month consent, defendant is prohibited from discriminating or retaliating and is required to advise recruiting sources that it hires without regard to race or color. ***EEOC v. Merrill Gardens, LLC,* No. 1:05-CV-004 (N.D. Ind. Oct. 6, 2005)**
- In September 2005, the nation's largest maker and retailer of wooden play systems agreed to pay six people a total of $275,000 to resolve an EEOC lawsuit, which alleged that the company's owner pursued a policy of limiting the hiring and promotion opportunities of African Americans and Hispanics and fired a White district manager in retaliation for recommending two Blacks for district manager openings after telling him that "our customers can't relate to minorities and therefore we must be choosy who we hire." ***EEOC v. Creative Playthings, Inc.*, No. 04-cv-3243 (E.D. Pa. press release issued Sep. 15, 2005).**
- In March 2004, EEOC settled a failure to promote case for $45,000, in which the company's president and CEO defended its action by arguing that the company was in "redneck country" and customers would not accept a Black man as an account manager. ***EEOC v. Frontier Materials Corp.,* No. H-03-856 (S.D. Tex. Mar. 2, 2004).**

Hispanic/Foreign Preference

- In February 2020, a Texas-based fiberglass conduit and strut manufacturer implemented extensive hiring reforms and paid $225,000 to settle allegations by the EEOC that it refused to hire non-Hispanic individuals as laborers. A Black, non-Hispanic man told the EEOC that the company refused to provide him with a job application after it learned he couldn't speak Spanish. The EEOC sued on behalf of an entire class of non-Hispanic job applicants who were allegedly negatively affected by Champion Fiberglass' hiring approach dating back to at least 2013. According to the consent decree, "these policies and practices have resulted in a laborer workforce that is almost 100% Hispanic." In accordance with the agreement, the company will pay a civil penalty and discontinue its "word-of-mouth" referrals to settle the accusations that its behavior stifled diversity in the laborer role. *EEOC v. Champion Fiberglass, Inc.*, No. 4:17-cv-02226 (S. D. Tx. Feb. 28, 2020).

- In September 2019, a San Jose, California food producer and distributor paid $2 million to settle an EEOC race discrimination lawsuit, charging that the company refused to hire non-Hispanic applicants of all races, including Black, White and Asian applicants, for unskilled production warehouse positions because its affiliates preferred Hispanic job applicants. The lawsuit also alleged that the companies discouraged non-Hispanic applicants for applying for open positions by imposing a language requirement not required for the job in violation of Title VII of the Civil Rights Act of 1964. In addition to the monetary settlement, the company agreed to hire an external monitor and implement hiring goals and measures to ensure hiring transparency and diversification. *EEOC v. Marquez Brothers International Inc.*, No. Case No: 1:17-cv-00044-AWI-EPG (E.D. Cal. Sep. 18, 2019).
- In July 2018, a Miami Beach hotel operator paid $2.5 million to settle an EEOC lawsuit that alleged the company had fired Black Haitian dishwashers who had complained about discrimination and replaced them with mostly light-skinned Hispanic workers. The EEOC also charged that their supervising chefs referred to the affected dishwashers as "f-----g Haitians," and "slaves" and reprimanded them for speaking Creole, even amongst themselves, while Hispanic employees were permitted to speak Spanish. *EEOC v. SLS Hotel South Beach*, Case No. 1:17-cv-21446 (S.D. Fla. July xx, 2018).
- In September 2016, Resource Employment Solutions, LLC, a temporary staffing agency, will pay $435,000 to settle a race and national origin discrimination lawsuit brought by the EEOC. The Commission claimed that the company illegally granted placement preferences to Hispanic temps over African American temps. Specifically, the company allegedly violated federal law by failing to place a class of African American workers into temporary shipping positions at a FedEx SmartPost location in Southaven, Mississippi. Instead, the staffing agency granted placement preferences to Hispanic workers and also retaliated against an African American employee who complained of the discrimination by refusing to place her and denying her a promotion. The four-year consent decree also includes provisions requiring anti-discrimination training, reporting, and postings. ***EEOC v. Resource Employment Solutions, LLC***, No. 3:14-cv-00217-MPM-SAA (N.D. Miss. Aug. 29, 2016).
- In July 2016, J&R Baker Farms LLC agreed to pay $205,000 and comply with the terms of a consent decree to settle an EEOC lawsuit alleging the Georgia farm favored foreign-born employees over African American and Caucasian domestic workers in employment. Specifically, the suit alleged that Baker Farms gave American-born workers fewer hours and tasks compared with the foreign-born workers and discharged U.S.-born white and African-American employees based on their race or national origin. The lawsuit also alleged that Baker Farms segregated work crews by national origin and race. The U.S.-born employees were allegedly subjected to tougher production standards and sent home early on days in which the foreign-born workers continued to work. The settlement requires Baker Farms to stop discriminatory practices on the basis of national origin or race, refrain from automatically filling jobs with H-2A workers, or foreign nationals who receive a visa to fill temporary agricultural jobs, without first considering American workers and institute a formal anti-discrimination policy by Aug. 1, in addition to the monetary relief. The two-year consent decree also requires the farm must hold interviews at the Georgia Department of Labor at least one day a week for two weeks "before the start of each H-2A season," and provide to the EEOC upon request a list of those people they hired, including their names, phone numbers, addresses and national origin, in addition to applicants not hired and those whom they fired, including any claims of discrimination, with those same details. ***EEOC v. J&R Baker Farms LLC***, No. 7:14-cv-00136 (M.D. Ga. July 6, 2016).

- In April 2016, Lawler Foods, a large local bakery, agreed to settle for $1 million an EEOC race and national origin discrimination class case. The EEOC alleged that Lawler violated Title VII by engaging in a pattern or practice of intentionally failing to hire black and other non-Hispanic applicants for jobs, and by using hiring practices, including word-of-mouth recruiting and advertising a Spanish-language preference, that had an adverse disparate impact on black and other non-Hispanic applicants without any business justification. In addition to the monetary claims fund, the four-year consent decree provides for extensive injunctive relief, including recruiting and hiring of blacks and non-Hispanic job applicants, and training for managers. Additionally, Lawler will seek to recruit and hire black and other non-Hispanic job applicants for its production jobs; conduct an extensive self-assessment of its hiring to ensure non-discrimination and compliance with the terms of the consent decree; conduct employee training to further its non-discrimination commitment; and designate an internal leader to prioritize compliance with the requirements of the consent decree. ***EEOC v. Lawlor Foods***, Civil Action No. 4:14-cv-03588 (Apr. 26, 2016).
- In July 2014, EEOC filed a lawsuit against AutoZone alleging the company unjustly fired a Chicago man for refusing to be transferred because of his race. The complaint alleges that AutoZone attempted in 2012 to redistribute the non-Hispanic workers at its auto parts retail location at S. Kedzie Ave and W. 49th Street in Gage Park. The EEOC claims that the company wanted to broaden the number of Hispanics at the store to better reflect its customer base. The EEOC said that when an African American sales manager was allegedly told to report to another store on the far South Side, he was fired for refusing the transfer. ***EEOC v. AutoZone, Inc.*****, No. 1:14cv5579 (7th Cir. complaint filed July 22, 2014).**
- In December 2012, Hamilton Growers, Inc., doing business as Southern Valley Fruit and Vegetable, Inc., an agricultural farm in Norman Park, Ga., agreed to pay $500,000 to a class of American seasonal workers - many of them African-American - who, the EEOC alleged, were subjected to discrimination based on their national origin and/or race, the agency announced today. The agreement resolves a lawsuit filed by the EEOC in September 2011. The EEOC's suit had charged that the company unlawfully engaged in a pattern or practice of discrimination against American workers by firing virtually all American workers while retaining workers from Mexico during the 2009, 2010 and 2011 growing seasons. The agency also alleged that Hamilton Growers fired at least 16 African-American workers in 2009 based on race and/or national origin as their termination was coupled with race-based comments by a management official. Additionally, the lawsuit charged that Hamilton Growers provided lesser job opportunities to American workers by assigning them to pick vegetables in fields which had already been picked by foreign workers, which resulted in Americans earning less pay than their Mexican counterparts. ***EEOC v. Hamilton Growers, Inc.*****, No. 7:11-cv-134 (M.D. Ga. Consent decree entered Dec. 10, 2012).**
- In December 2012, EEOC and a North Carolina printing firm settled for $334,000 a lawsuit alleging the firm violated Title VII of the 1964 Civil Rights Act by not placing non-Hispanic workers in its "core group" of regular temporary workers who perform the company's light bindery production jobs and giving disproportionately more work hours to Hispanic workers. Under the proposed two-year consent decree, PBM Graphics Inc. would place the settlement funds in escrow for distribution later among non-Hispanic workers identified by EEOC as victims of the alleged national origin discrimination. ***EEOC v. PBM Graphics Inc.,*** **No. 11-805 (M.D.N.C. proposed consent decree filed 12/10/12).**
- In October 2012, a Hampton Inn franchise in Craig, Colorado agreed to pay $85,000 to resolve a race and national origin discrimination lawsuit regarding the terminations of three Caucasian

and non-Latino employees. According to the lawsuit, the general manager of the hotel allegedly was told by the business owners "to hire more qualified maids, and that they preferred maids to be Hispanic because in their opinion Hispanics worked harder" and that White or non-Hispanic workers were indolent. ***EEOC v. Century Shree Corp. & Century Rama Inc.*, Case No. 11-cv-2558-REB-CBS (D. Colo. Oct. 2, 2012).**

- In September 2012, an Indianapolis hotel agreed to pay $355,000 to settle a job discrimination case with the EEOC. The Hampton Inn is accused of firing Black housekeepers because of their race and retaliating against those who had complained. According to the EEOC, the general manager of the Hampton Inn hotel advised her employees that she wanted to get "Mexicans" in who would clean better and complain less than her black housekeeping staff, even if the Hispanic hires were equally or less qualified than Black candidates. In addition to the monetary relief, the hotel must offer three of those employees their next available housekeeping positions and train any employees involved in the hiring process. ***EEOC v. New Indianapolis Hotels, Inc.*, Case No. 1:10-cv-1234 (S.D. Ind. Sep. 21, 2010).**
- In September 2010, the EEOC sued an Indianapolis hotel for denying employment to Black housekeeping applicants, offering lower pay and hours to Black housekeeping staff, terminating Black housekeeping staff who complained of the less favorable treatment, and destroying employment records since at least September 2, 2008 because of the hotel's preference for Hispanic workers. According to the EEOC, the general manager of the Hampton Inn hotel located at 2311 North Shadeland Ave. advised her employees that she wanted to get "Mexicans" in who would clean better and complain less than her Black housekeeping staff. The EEOC's lawsuit seeks relief for a class of terminated housekeeping employees as well as a class of Black housekeeping applicants who sought employment at its Shadeland Avenue Hampton Inn facility between approximately September 2, 2008 and June 2009. ***EEOC v. New Indianapolis Hotels Inc.*, Case No. 1:10-cv-1234 (S.D. Ind. filed Sept. 30, 2010)**.
- In August 2010, a judge refused to dismiss an EEOC lawsuit alleging that a freight management company hired Hispanic workers to the exclusion of equally or more qualified non-Hispanic employees for non-management positions at a Wal-Mart distribution facility in Shelby, North Carolina. The court rejected the company's claims that the EEOC had failed to state a claim in its complaint and that the suit was barred by laches. ***EEOC v. Propak Logistics Inc.*, No. 09-00311 (W.D.N.C. Aug. 6, 2010)**.
- In August 2010, a temporary staffing agency with operations in five states admitted no wrongdoing but agreed to pay $585,000 to settle an EEOC suit alleging that the agency favored Hispanic workers over Black workers in hiring at a warehouse in Memphis, Tennessee. The Commission claimed that the agency selected Hispanics regardless of prior experience, place in line or availability. In addition to the monetary settlement, the staffing agency will create and publish a written hiring and placement policy prohibiting discrimination, post such policy at its Memphis facilities, and provide race and national origin discrimination awareness training for all recruiters, and onsite personnel. Further, to demonstrate its strong and clear commitment to a workplace free of race and national origin discrimination, the agency agreed that if it advertises, it will devote a portion of its advertising budget to placing ads in diverse media outlets.***EEOC v. Paramount Staffing Inc.*, No. 2:06-02624 (W.D. Tenn. settled Aug. 23, 2010)**.
- In August 2009, a Pinehurst, N.C.-based support services company for condominium complexes and resorts paid $44,700 and will furnish significant remedial relief to settle a race and national origin discrimination lawsuit, alleging the company unlawfully discharged six housekeepers because of their race (African American) and national origin (non-Hispanic) and immediately

replaced them with Hispanic workers. ***EEOC v. Little River Golf, Inc.*, No. 1:08CV00546 (M.D.N.C. Aug. 6, 2009).**

- In May 2009, a Statesville, NC grocery store agreed to settle for $30,000 a lawsuit alleging that it had fired a White, non-Hispanic meat cutter based on his race and national origin and replaced him with a less-qualified Hispanic employee. In addition, the store has agreed to distribute a formal, written anti-discrimination policy, train all employees on the policy and employment discrimination laws, and send reports to the EEOC on employees who are fired or resign. ***EEOC v. West Front Street Foods LLC, d/b/a Compare Foods*, No 5:08-cv-102 (W.D.N.C. settled May 19, 2009).**
- In January 2008, a Charlotte, N.C supermarket chain paid $40,000 to settle an EEOC lawsuit alleging that the supermarket fired or forced long-term Caucasian and African American employees to resign and replaced them with Hispanic workers after it took over a particular facility. In addition to the monetary relief, the consent decree required the company to distribute a formal, written anti-discrimination policy; provide periodic training to all its employees on the policy and on Title VII's prohibition against national origin and race discrimination; send periodic reports to the EEOC concerning employees who are fired or resign; and post a "Notice to Employees" concerning this lawsuit. ***EEOC v. E&T Foods*, LLC, d/b/a Compare Foods, Civil Action No 3:06-cv-318 (W.D.N.C. settled Jan. 28, 2008).**

Job Segregation

- In December 2018, Maritime Autowash (later known as Phase 2 Investments, Inc.) paid $300,000 in monetary relief and furnished equitable relief to settle an EEOC race and national origin discrimination lawsuit. According to the EEOC's August 2017 lawsuit, Maritime violated Title VII of the Civil Rights Act of 1964 by segregating a class of Hispanic workers into lower-paying jobs as laborers or detailers at its former Edgewater, Md., facility. Maritime allegedly failed to offer them promotion or advancement opportunities to key employee or cashier positions, despite their tenure and outstanding job performance, and paid many class members only the minimum wage despite years of service, while paying non-Hispanic workers higher wages and promoting them. The EEOC also charged that Maritime discriminated against the Hispanic class members in their terms and conditions of employment, such as forcing them to perform other duties without additional compensation and denying them proper safety equipment or clothing. The EEOC said Maritime required Hispanic workers to perform personal tasks for the owner and managers, such as routinely assigning the female Hispanic class members to clean the houses of the owner or manager and assigning the male Hispanics to perform duties at their homes, such as landscaping, cleaning the pool, picking up dog excrement, painting or helping with moves. The three-year consent decree enjoins Maritime from retaliating in the future against any individual for asserting his or her rights under Title VII or otherwise engaging in protected activity. Should Maritime reopen and reactivate its Maryland facilities, it shall be enjoined from creating or maintaining a hostile work environment and inferior economic terms and conditions of employment on the basis of national origin or race. *EEOC v. Phase 2 Investments, Inc.*, Civil Action No. 1:17-cv-02463 (D. Md. pre-trial settlement filed Dec. 2018).
- In June 2017, the Seventh Circuit affirmed the district court's grant of summary judgment on the Commission's race segregation claim brought pursuant to 42 U.S.C. § 2000e-2(a)(2), Title VII's subsection prohibiting the limiting, classifying, or segregating of employees based on a protected trait. The court "assume[d] for the sake of argument" that the evidence created a

material factual dispute about whether AutoZone intentionally segregated its Black employee Kevin Stuckey because of his race when it transferred him out of a predominantly Hispanic-staffed store. But it concluded that a jury would not find the lateral transfer had adversely affected Stuckey's employment since he suffered no reduction in pay, benefits, or responsibilities and it did not "alter his conditions of employment in a detrimental way." Nonetheless, the court rejected AutoZone's argument, accepted by the district court below, that the absence of an "adverse employment action" defeats a claim under § 2000e-2(a)(2). It ruled that 42 U.S.C. § 2000e-2(a)(2) requires only that the transfer had a "tendency to deprive a person of employment opportunities," but concluded that there was "[n]o evidence" in the record to make the requisite showing in this case. Id. ***EEOC v. AutoZone, Inc***., No. 15-3201 (7th Cir. June 20, 2017), ***reh'g en banc denied*** (7th Cir. Nov. 21, 2017).

- In June 2013, the largest and oldest adult entertainment strip club in Jackson, MS paid $50,000 to settle a lawsuit alleging that it discriminated against Black dancers when it maintained schedules only for Black women and forced them to compete for dancing slots on the "Black shift." The lawsuit also alleged that the club retaliated against the Black dancers after one of them filed a complaint with the EEOC, allegedly by reducing their work hours and subjecting them to fines, forcing one of them to quit. Under the consent decree, the club will implement new policies and practices designed to prevent racial discrimination and retaliation. It also will conduct supervisor and employee training on discrimination and retaliation laws and establish a confidential process for people to submit discrimination and retaliation complaints. The process will include employer protections of non-retaliation and requirements for a prompt, thorough and impartial investigation. EEOC officials said Danny's will also post notices at the work site, including EEOC on new allegations of race discrimination and retaliation during the two-year period. EEOC v. Danny's Cabaret, No. 3:10-cv-00681 (S.D. Miss. consent decree filed June 28, 2013). In May 2013, the EEOC sued Clarksdale's Stone Pony Pizza, alleging that the pizza place maintains a racially segregated workforce, and that it "hired only whites for front-of-the-house positions such as server, hostess, waitress, and bartender, and hired African-Americans for back-of-the-house positions such as cook and dishwasher." ***EEOC v. Stone Pony Pizza, Inc.*****, No. 4:13-cv-92(SA)(JMV) (N.D. Miss. reopened after dismissal due to bankruptcy Mar. 30, 2015).**
- In November 2011, a hospital on Chicago's South Side agreed to pay $80,000 to settle a class race, sex discrimination and retaliation lawsuit filed by the EEOC. According to the Commission's lawsuit, the hospital allegedly subjected a class of Black female employees to different terms and conditions of employment and segregation in job assignments because of their race. The suit also alleged that at least one of the women was demoted in retaliation for opposing and complaining about unlawful employment practices. Further, the agency's administrative investigation revealed that numerous Black female medical technicians at the hospital appear to have been required to perform assignments that their male Asian-Indian counterparts were allegedly not required to perform. The two-year consent decree resolving the case enjoins the hospital from engaging in further race and/or sex discrimination or retaliation. The consent decree also requires that the hospital provide training to all employees, including supervisory employees, in its Cardiopulmonary Department; that it submit periodic reports to EEOC about any complaints of sex and/or race discrimination or retaliation; and that it post a notice at various locations within its facility regarding the outcome of this lawsuit. ***EEOC v. Jackson Park Hosp. & Med. Ctr.,*** **No. 11 C 04743 (N.D. Ill. Nov. 21, 2011).**
- In September 2010, the owner of a strip club settled for $95,000 a race discrimination lawsuit, alleging that two African-American doormen were harassed, segregated and provided different terms and conditions of employment because of their race. The managers of the club used racial

slurs when speaking of and to the doormen, forced them to work in the back of the club instead of at the entrance, and complained that "black music makes the club look bad." In addition to the monetary damages, the 30-month consent decree provided injunctive relief, required the company to post a notice about the settlement, and obligated the company to conduct anti-discrimination training and to report race discrimination complaints. ***EEOC v. Papermoon-Stuart, Inc.*, No. 0:09-cv-14316 (S.D. Fla. *settled* September 28, 2010)**.

- In September 2010, the EEOC commenced a lawsuit against a giant shipping and delivery service for subjecting a class of African-American employees to different job assignments because of their race. The EEOC's administrative investigation found that African-American drivers were assigned to predominately Black neighborhoods and White drivers to White neighborhoods. Furthermore, the investigation revealed that African-American employees were assigned to more difficult and dangerous work than Caucasian employees. ***EEOC v. DHL Express (USA), Inc.*, No. 1:10-cv-06139 (N.D. Ill. filed Sept. 24, 2010)**.
- In June 2010, EEOC and an Atlanta home builder settled for $378,500 a suit alleging the company unlawfully discriminated by assigning Black sales employees to neighborhoods based on race, failing to promote African Americans or women to management, and harassing an employee who complained. ***EEOC v. John Wieland Homes and Neighborhoods Inc.*, No. 1-09-CV-1151 (N.D. Ga. consent decree approved June 22, 2010).**
- In September 2009, a supply company in Arizona agreed to pay $49,500 to settle an EEOC lawsuit that alleged the company assigned an African American employee and his Hispanic team member to less desirable, lower-paying jobs than their Caucasian counterparts because of the Black employee's race. Additionally, the lawsuit alleged that the supervisor responsible for determining job assignments used racial slurs such as "pinche negro," the n-word, and other racially derogatory comments to refer to the Black employee. The consent decree enjoins the company from engaging in racial discrimination. Additionally, the decree requires the company to implement and post written anti-discrimination policies and procedures, to provide training on race discrimination for all personnel and neutral references for the claimants, and to report to the EEOC any changes to its anti-discrimination policies and any future complaints alleging racial discrimination. ***EEOC v. L&W Supply Co.*, Case No. 2:07-cv-01364-JWS (D. Ariz. settled Sept. 2, 2009)**.
- In June 2009, a federal district court granted summary judgment for a Michigan-based freight and trucking company on all race discrimination claims asserted by the EEOC and the claimant. EEOC had alleged that the company refused to hire a Black female applicant for a part-time customer service position, even after she was designated best qualified and had passed the requisite drug test. According to the lawsuit, the company's regional manager vetoed her hire because he was concerned about a Black customer service representative working with customers and drivers in southeast Missouri. On September 22, 2010, the Eighth Circuit affirmed the district court on all federal law claims and remanded the claimant's state law claim. On January 7, 2011, the district court dismissed the claimant's state law claim without prejudice '***EEOC v. Con-way Freight, Inc.*, No. 4:07-cv-01638 (E.D. Mo. June 17, 2009)**.
- In May 2009 a North Carolina-based restaurant entered a three-year consent decree to pay $14,700 and provide a positive letter of reference for the claimant. The EEOC had alleged that the restaurant refused to hire an African American employee for a bartender position because of his race. According to the complaint, the Black employee sought and was qualified for the bartender position, but the restaurant hired him as a server and refused to place him in the bartender position on several occasions when it became available. Evidence indicated that the restaurant had a practice of hiring only White people as bartenders. Eventually, the Black

employee resigned because he believed he would never be placed in the bartender position. . The consent decree enjoins the restaurant from discriminating based on race in hiring or promotion into the bartender position, requires the restaurant to adopt a written anti-discrimination policy, provide Title VII training to all managers and supervisors, keep records related to any future complaints alleging racial discrimination in hiring or promotion, and submit reports to the EEOC. The restaurant must also keep records on the hiring of and promotion into the bartender position. ***EEOC v. Chelda, Inc. and Charmike Holdings, LLC, dba Ham's Restaurant*, Civil Action No. 1:08-cv-00236 (W.D.N.C. May 12, 2009)**.

- In March 2008, a national restaurant chain entered a consent decree agreeing to pay $30,000 to resolve an EEOC case charging that the company gave African-American food servers inferior and lesser-paying job assignments by denying them assignments of larger parties with greater resulting tips and income, by denying them better paying assignments to banquets at the restaurant, and by failing on some occasions to give them assignments to any customers. The consent decree enjoins the restaurant from engaging in racial discrimination and requires the chain to post a remedial notice and amend and distribute its anti-discrimination and anti-harassment policies. The amended policies must state that prohibited racial discrimination in "all other employment decisions" includes, but is not limited to, making decisions and providing terms and conditions of employment such as pay, assignments, working conditions, and job duties; also, it must prohibit retaliation. In addition, the company must revise its complaint mechanism and clarify and expand its website and toll-free phone number for the reporting of incidents of employment discrimination. The consent decree also requires the restaurant to provide training in equal employment opportunity laws for all of its employees and to appoint an Equal Employment Office Coordinator, who will be responsible for investigating discrimination complaints. ***EEOC v. McCormick & Schmick's Restaurant Corp*, No. 06-cv-7806 (S.D.N.Y. March 17, 2008)**.
- In January 2008, a bakery café franchise in Florida entered a two-year consent decree that enjoined the company from engaging in racial discrimination or retaliation and required it to pay $101,000 to the claimants. EEOC had alleged that the company segregated the Black employees from non-Black employees and illegally fired a class of Black employees in violation of Title VII. Under the consent decree, the principal of the company must attend an eight-hour training session on equal employment opportunity laws. The decree also mandated that if the company ever re-opens the franchise in question or any other store, it must distribute its anti-discrimination policy to all employees, post a remedial notice, and report any future complaints alleging race-based discrimination.***EEOC v. Atlanta Bread Co., International and ARO Enterprise of Miami, Inc.*, No. 06-cv-61484 (S.D. Fla. January 4, 2008)**.
- In July 2007, EEOC and Walgreens agreed to a proposed settlement of $20 million to resolve allegations that the Illinois-based national drug store chain engaged in systemic race discrimination against African American retail management and pharmacy employees in promotion, compensation and assignment. In addition to the monetary relief for an estimated 10,000 class members, the consent decree prohibits store assignments based on race. ***EEOC v. Walgreen Co.*, No. 07-CV-172-GPM; *Tucker v. Walgreen Co*. No. 05-CV-440-GPM (S.D. Ill. July 12, 2007).**
- In March 2007, the owners of a Louisiana motel agreed to pay $140,000 to charging party and three other claimants who alleged that the motel would not hire them for front-desk positions because they are African American. The company also agreed not to exclude any African American employee or applicant for the front-desk day positions based on their race for any future businesses it may operate. The consent decree further requires it to maintain a complaint

procedure to encourage employees to file internal good faith complaints regarding race discrimination and retaliation. ***United States v. Sunrise Hospitality BC-II LLC,* No. 5:06cv1684 (W.D. La., *consent decree entered* Mar. 27, 2007).**

- In April 2006, EEOC obtained $450,000 to settle a race discrimination case in which a health care provider explained its refusal to hire "Blacks or Jews" for a client in Oregon by arguing that it was protecting the safety of its employees, especially in areas where the KKK is active. ***EEOC v. Health Help, Inc.,* 03-1204 PHX RGS (D. Ariz. Apr. 2006).**

Terms and Conditions

- In February 2020, the EEOC's Office of Federal Operation (OFO) found that the Department of Veteran Affairs engaged in race and age discrimination when it did not select a Registered Nurse (RN) at the Murfreesboro VA Medical Center facility in Tennessee for the position of Nurse Manager, Specialty Clinics. According to OFO, the Agency investigated the claim which produced evidence in support of the allegation. After screening qualified candidates using a "Best Qualified" (BQ) grid, the primary panel interviewed the five highest-scoring candidates, including Complainant. Selectee failed to pass the BQ screening and was not interviewed. After the interviews, the panel selected Complainant. Complainant had approximately 30 years' experience as an RN, supervisor, assistant director, and manager. Selectee possessed the basic qualifications and had served as Acting Nurse Manager for a few months. The Selection Official, however, rejected Complainant, noting she was the second-ranked candidate, and the top-ranked candidate, also an African-American, and directed the panel to re-interview the candidates. The Associate Director emailed the panel chair and Selection Official, asking that the panel interview Selectee "as a professional courtesy." The BQ grid results were disregarded and all candidates were rated and ranked based solely on interview scores. Based on interview scores, Selectee was chosen. OFO found that the elimination of objective "Best Qualified" criteria in favor of rating and ranking candidates based solely on interviews was the creation of a deliberately subjective selection process that was highly suggestive of pre-selection and unlawful discrimination. OFO rejected the Agency's explanation that the BQ scoring grid failed to consider years of nursing experience within specialty care clinics, noting that Selectee was considerably less experienced than Complainant. OFO found that the Agency's explanation was a pretext for its unlawful discrimination in the selection process and the Agency had failed to articulate a legitimate, nondiscriminatory reason for its actions. OFO ordered the Agency to promote Complainant and pay back pay with interest and benefits, investigate and determine her entitlement to compensatory damages, and consider disciplining and provide EEO training to the responsible management officials. A posting notice and attorney's fees were also ordered. *Arleen L. v. Dep't of Veterans Affairs (Veterans Health Administration),* EEOC Appeal No. 2019002725 (February 4, 2020).
- In January 2018, the EEOC reversed an agency's decision, holding on appeal that an African-American Senior Officer Specialist (SOS), GS-8, at the Department of Justice's Low Security Correctional Institution (LSCI) in North Carolina had been subjected the SOS to disparate treatment regarding promotions. According to evidence in the record, management denied the SOS the opportunity to the attend trainings necessary for promotion into a Security Officer Locksmith (SOL), citing budgetary reasons. Meanwhile, in the same timeframe, management approved such training for two similarly situated White officers who were eventually promoted to SOL. The Commission noted that several witnesses subscribed to Complainant's view that management intentionally foreclosed minorities from career advancement. The EEOC did not

find that the SOS had been subjected to a racially hostile work environment even though he averred that while he and another African-American coworker were working, a Caucasian Officer reportedly said to them as they were walking away, “See you, boys,” and said to Complainant on another occasion, “See you tomorrow boy.” To remedy the discrimination, the Commission ordered the Agency to provide Complainant the trainings at issue, and to noncompetitively promote him in a similar fashion to the two cited Caucasian comparators. *Nathan S. v. Dep’t of Justice*, EEOC Appeal No. 0120151282 (Jan. 9, 2018).

- In November 2017, the EEOC reversed the Department of Homeland Security's (Agency) finding of no race discrimination on the Complainant's allegation that the Agency discriminated against him based on race when it issued him Letters of Counseling for unprofessional conduct and missing a duty call. In reversing the Agency's decision finding no discrimination, the Commission found that the issuances of the disciplinary actions giving rise to these claims was motivated by discriminatory animus based on Complainant's race. Specifically, the Commission found that the discipline issued was disproportionate and lacked uniformity, and the record showed that other employees were not disciplined for engaging in similar conduct. The Agency was ordered, among other things, to rescind the Letters and remove them from Complainant's personnel record, as well as adjust any subsequent discipline that was based on the Letters. The Commission affirmed the Agency's finding of no discrimination with respect to other matters raised in the complaint. ***Erwin B. v. Dep't of Homeland Sec***., EEOC Appeal No. 0120151276 (May 15, 2017), request for reconsideration denied EEOC Request No. 0520170446 (Nov. 3, 2017).
- In August 2017, the EEOC affirmed an Administrative Judge's finding that the Department of Defense (Agency) had discriminated against Complainant when it did not select him for an Assistant Special Agent in Charge position. Following a hearing, the AJ found that the Agency failed to articulate a legitimate, nondiscriminatory reason for Complainant's non-selection. While the Agency asserted that Complainant was not promoted because he did not pass an annual physical fitness exam, Agency managers testified that the supervisory position would involve more administrative work than Complainant's position and there would not be a substantial change in the physical requirements. Further, the AJ noted that the selection criteria was changed for one candidate who did not meet the requirements but not for Complainant. Complainant also stated that the Director, who was extensively involved in the selection yet did not testify at the hearing, made several comments that revealed a discriminatory intent. The AJ questioned the Director's credibility, finding that there were considerable gaps in the Director's statements. The Commission affirmed the AJ's findings on appeal, and noted that even if the Agency met its burden of providing a legitimate reason for Complainant's non-selection, the evidence supported a finding of pretext. Specifically, Complainant was considered the best candidate by his second-level supervisor, and the record showed that Complainant was better qualified than the selectee. The Agency was ordered, among other things, to place Complainant into the position or a similar position, with appropriate back pay and benefits, and pay him proven compensatory damages. ***Kenny C. v. Dep't of Def***., EEOC Appeal No. 0720150030 (Aug. 29, 2017).
- In March 2017, the EEOC settled its contempt action against Baby O's Restaurant, dba Danny's Downtown, a Jackson-based provider of adult entertainment services. The contempt action charged that Danny's breached the terms of an agreement it entered into with the EEOC to resolve a racial discrimination and retaliation lawsuit. According to the EEOC's lawsuit, Danny's subjected four African-American females to unlawful race discrimination and retaliation. The EEOC charged that Black entertainers were subjected to a variety of less advantageous terms and conditions of employment than White ones. The misconduct included subjecting African-

American entertainers to arbitrary fees and fines, forcing them to work on less lucrative shifts, and excluding them from company advertisements, all because of their race. The EEOC also charged that Danny's retaliated against the entertainers by reducing their work hours when one of them engaged in activity protected by law, including filing a discrimination charge with the EEOC. The EEOC alleged the retaliation was so severe that one of the entertainers was forced to leave her employment. In June 2013, the company entered into a consent decree agreeing to pay $50,000 in relief to the Black females who had been subjected to the racial discrimination and retaliation. The decree also provided for significant injunctive relief, including revising the company's anti-discrimination policy; promulgating and disseminating it to employees; providing a copy of that policy to the EEOC; providing mandatory Title VII training to supervisory and non-supervisory employees and entertainers; making periodic reports of its compliance to the EEOC; and posting a notice the policy in its workplace. After paying the $50,000, Danny's failed to comply with the rest of the decree. The Commission filed a contempt action, and on March 2, 2017, the court approved an amended consent decree that extended the injunctive requirements of the decree by one year. ***EEOC v. Baby O's Restaurant dba Danny's Downtown***, Civil Action No. 3:12-CV-681-DPF-FKB (SD. Miss. Mar. 2, 2017).

- In December 2016, a south Alabama steel manufacturing plant agreed to pay $150,000 as part of a three-year consent decree to resolve an EEOC lawsuit. In June 2015, EEOC filed a lawsuit accusing Outokumpu Stainless USA, LLC of not promoting workers at its Calvert plant because of their race. The Commission said certain Black workers were highly qualified to become Team Leaders, but the company hired White applicants who were less qualified for the job. In addition to the $150,000 payment, Outokumpu agrees to take specified actions designed to prevent future discrimination, including implementing new policies and practices designed to prevent race discrimination in employment decisions, providing anti-discrimination training to employees, and the posting of anti-discrimination notices in its workplace. ***EEOC v. Outokumpu Stainless USA, LLC***, No. 1:13-cv-00473-WS-N (S.D. Ala. Dec. 2016).
- In June 2015, Dollar General Corporation paid $32,500 and furnish other relief to settle a race discrimination lawsuit filed by the EEOC. In its lawsuit, the EEOC charged that Dollar General refused on at least three separate occasions to promote a Black employee to a vacant assistant store manager position at its Long Beach, Miss., store because of her race. The EEOC alleged that she had expressed interest in promotion and had substantial qualifications, but Dollar General instead hired less-qualified white applicants. The suit further alleged that Dollar General subjected the Black employee to increasing hostility and discipline after she complained about the unequal treatment. The company denied the allegations in court. The court denied Dollar General's motion for summary judgment and the parties ultimately entered a two-year consent decree requiring Dollar General to maintain effective anti-discrimination policies, distribute the policies to all newly hired employees, and provide management training on anti-discrimination laws and other injunctive relief to ensure discrimination complaints are promptly reported and investigated. ***EEOC v. Dolgencorp, LLC d/b/a Dollar General***, No. 1: 13-cv-00383-LG-JCG (S.D. Miss. June 11, 2015).
- In July 2014, the apprenticeship school affiliated with a New Jersey construction trade union will pay $34,500 and provide substantial remedial relief to settle a discrimination claim by the EEOC, alleging that the Joint Apprenticeship and Training Committee of Sheet Metal Workers Local 25 discharged a Black apprentice because of his race just two weeks before he was to graduate from the four-year apprenticeship program. The EEOC's findings arose from its investigation of the apprentice's appeal of his dismissal, which he filed with the court-appointed special master who monitors Local 25 and its JATC pursuant to past judicial findings of race and national origin

discrimination. According to the EEOC, the JATC violated the court's previous orders by summarily discharging the apprentice for alleged poor performance just days before he was to complete the program and be promoted to journeyman status. The JATC imposed this severe sanction despite the apprentice satisfactorily completing virtually the entire eight-term program and despite his complaints about inadequate on-the-job training from biased contractors. ***EEOC v. Day & Zimmerman NPS, Inc.*, No. 1:71-cv-02877(LAK)(MHD) (S.D.N.Y. consent decree filed July 11, 2014).**

- In March 2012, the U.S. Court of Appeals for the Fifth Circuit ruled that the EEOC presented sufficient evidence that two African American railroad workers were disciplined more harshly for workplace rule violations than comparable White employees to raise a jury issue of race discrimination under Title VII. In a 2-1 decision partially overturning a federal trial court in Louisiana, the divided panel found that EEOC established a prima facie case of "work-rule" discrimination against Kansas City Southern Railway Co. on behalf of two of the four claimants. In short, the appellate court found that a train engineer and a train conductor, both African American, were fired following separate incidents involving operational errors while White employees involved in the same incidents were not disciplined or were dismissed but reinstated despite committing comparable infractions. ***Turner v. Kansas City S. Ry. Co.*, No. 09-30558 (5th Cir. revised opinion Mar. 26, 2012).**
- In May 2011, a property and casualty insurance giant agreed to pay $110,000 to settle an EEOC lawsuit alleging that it unlawfully refused to promote an Asian employee in its Milwaukee underwriting office because of her race. The suit further asserted that the insurance company illegally retaliated against the employee by passing her over for job openings after she filed a discrimination charge with ***EEOC. EEOC v. Fed. Ins. Co., d/b/a Chubb & Son*, Case No. 2:10-cv-00849 (E.D. Wis. *settled* May 3, 2011)**.
- In November 2010, a company which transports saltwater from oil wells and has facilities in Quitman, Arizona settled for $75,000 the EEOC's lawsuit alleging that it subjected a Black truck driver and another Black employee at its Quitman location to racial harassment, which included racial jokes and racially derogatory language (e.g., "nigger"); gave them fewer work assignments than White employees because of their race; and further reduced the driver's work assignments because of his complaints about racial discrimination and suspended and discharged him because of his race and his complaints about racial discrimination. The driver complained about the racial jokes and language to management but was suspended for 4 days following a dispute about a work assignment, and was discharged during the suspension. The 5-year consent decree, *inter alia*, enjoins the company from subjecting Black employees to disparate working assignments based on race and from suspending and terminating employees in retaliation for opposing practices unlawful under Title VII or for participating in Title VII proceedings. The company is also required to provide training for its employees on reporting and investigating race discrimination and race harassment complaints. ***EEOC v. Complete Vacuum and Rental, Inc.*, No. 1:09-cv-00049-SWW (E.D. Ark. Nov. 8, 2010)**.
- In January 2012, a Henderson, Nevada-based chain of automotive dealerships agreed to pay $150,000 to two Black employees to settle a Title VII lawsuit alleging that the company violated federal law by engaging in discrimination, harassment and retaliation. According to the EEOC, a parts department manager, who is White, allegedly used the "N-word" to refer to at least two Black employees and made racially derogatory comments and jokes on a near daily basis at the dealership. The same manager allegedly referred to one Black employee as "gorilla" while the employee was holding a banana. The EEOC contended that the manager also imposed stricter work-related rules upon the dealership's Black employees by disciplining them for conduct that

non-Black employees were not disciplined for, and giving them less favorable work assignments. Ultimately, both Black employees were terminated, but the EEOC asserted that one of the employees was discharged for an infraction for which non-Black employees were not disciplined, while the other was discharged after relaying his intention to file a charge of discrimination to the company. In addition to the monetary relief, the company agreed to distribute a revised discrimination and complaint policy and hire an employment consultant. ***EEOC v. Shack-Findlay Automotive, LLC d/b/a Findlay Honda and Findlay Automotive Group, Inc.***, **Case No. 2:10-cv-01692-KJD-RJJ (D. Nev. Jan. 17, 2012)**.

- In June 2010, a Warren, Mich., automotive supplier paid $190,000 to settle a race discrimination and retaliation lawsuit in which the EEOC alleged that the supplier repeatedly overlooked qualified non-White employees, including a group of Black employees and a Bangladeshi employee, for promotions to the maintenance department. In addition, a White employee who opposed this type of race discrimination and complained that managers in the maintenance department were using racial slurs allegedly was fired shortly after the company learned of his complaints. ***EEOC v. Noble Metal Processing, Inc.*, No. 2:08-CV-14713 (E.D. Mich. press release filed June 8, 2010).**
- In March 2010, the EEOC upheld an Administrative Judge's determination that a federal agency discriminated against a Black employee on the basis of race when it terminated the complainant's participation in a training program. The record showed that complainant was not rated as "marginal" and that the Manager who made the decision to terminate complainant conceded that complainant passed all required tests. Further, the Manger did not consult with the instructors before making the decision, but instead relied upon one individual who was clearly hostile toward complainant and who the AJ found was not credible. Additionally, the environment was not favorable to Black recruits. Two witnesses testified that they heard someone remark "one down and two to go" when complainant turned in his equipment following his termination. At that time, there were only three Black students in the 31-person class. One week before the class was to graduate, the third and last Black student was removed from the program. The record also revealed that it was the agency's policy to afford remedial training and an opportunity to correct behavior before removing candidates from the training program. The record indicated that the policy was followed with respect to White comparatives, but was not followed in complainant's case. The agency was ordered to, among other things, offer complainant reinstatement into the next training program, with back pay. ***Thalamus Jones v. United States Department of Energy*, EEOC Appeal No. 0720090045 (March 5, 2010).**
- In January 2010, an international designer and manufacturer of medical devices agreed to pay $250,000 to settle EEOC's Title VII lawsuit alleging race discrimination. The suit alleged that the manufacturer subjected a Black full-time sales representative to different terms and conditions of employment when it removed him from top accounts, assigned him to poorer producing accounts, and then terminated him even though he continued to perform successfully, while failing to discharge any of the poorer performing White sales executives. The 2-year consent decree also requires the manufacturer to rehire the Black sales rep in its North Texas District at a higher salary with 3% commissions and relocation expenses up to $15,000. ***EEOC v. Linvatech Corp. d/b/a Conmed Linvatech*, No. 09-2158 (N.D. Ill. Jan. 4, 2010)**.
- In December 2009, a Tennessee company that processes nuclear waste agreed to settle claims by the EEOC that Black employees were subjected to higher levels of radiation than others. Specifically, the EEOC alleged that, in addition to paying them less and permitting a White manager to refer regularly to them with the N-word and other derogatory slurs, such as "boy," the company manipulated dosimeters of Black employees assigned to work with radioactive

waste to show lower levels of radiation than the actual ones. Under the agreement, 23 Black employees will receive $650,000. ***EEOC v. Race, LLC, doing business as Studsvik, LLC*, Civil Action No. 2:07-cv-2620 (W.D. Tenn. Dec. 2009).**

- In June 2009, the EEOC overturned an AJ's finding of no discrimination in a Title VII race discrimination case. Complainant alleged he was discriminated against on the bases of race (African-American) and retaliation when he was not selected for an of four vacant Risk Management Specialist positions. Complainant applied for the position, was rated as qualified, interviewed for the position, and was not selected. All four of the selectees were White. The agency found no discrimination and complainant appealed. The Commission found that the agency failed to provide a legitimate, non-discriminatory reason for the non-selection. The agency stated that the selectees were chosen because their skills and qualifications fit the agency's needs. The Commission found that the agency's reasons were not sufficiently clear so that complainant could be given a fair opportunity to rebut such reasons. The Commission also noted that the agency did not produce any rating sheets from the interview panel, and that complainant appeared to possess similar qualifications to the other selectees. Thus, the Commission found that the prima facie case and complainant's qualifications, combined with the agency's failure to provide a legitimate, nondiscriminatory reason for complainant's non-selection, warranted a finding of race discrimination. Because of this finding, the decision found it unnecessary to address the basis of retaliation. As remedies, the agency was ordered to place complainant into the Risk Management Specialist position with back pay and consideration of compensatory damages, EEO training to responsible agency officials, consideration of discipline for responsible agency officials, attorneys fees order, and posting notice. ***Frazier v. United States Department of Agriculture*, EEOC Appeals No. 0120083270 (June 4, 2009).**
- In August 2009, a Washington Park, Ill., packaging and warehousing company agreed to pay $57,500 and provide training to settle a race discrimination and retaliation lawsuit alleging that the company failed to provide a Black employee the pay raise and health insurance coverage provided to his White co-workers, and then fired him in retaliation for filing a charge of race discrimination with the EEOC. ***EEOC v. Material Resources, LLC, d/b/a Gateway Co-Packing Co.*, No. 3:08-245-MJR (S.D. Ill. August 14, 2009).**
- In January 2008, the EEOC settled a race and national origin discrimination case against a Nevada U-Haul company for $153,000. The EEOC had charged that the company subjected Hispanic and Asian/Filipino employees to derogatory comments and slurs based on their race and/or national origin. Hispanic employees also were subjected to comments such as "go back to Mexico." In addition, Filipino mechanics were denied promotions while less qualified White employees were promoted. The EEOC also charged that Hispanic and Filipino employees were told they had to be "White to get ahead" at the company. As part of the injunctive relief, U-Haul further agreed to provide training to all employees in its Nevada locations, and provide annual reports to the EEOC regarding its employment practices in its Nevada branches. ***EEOC v. U-Haul Company of Nevada*, Case No. 2:06-CV-01209-JCM-LRL(D.Nev. settled Jan. 28, 2008).**
- In May 2008, in New Capital Dimensions case the EEOC resolved a race discrimination and retaliation suit against a North Georgia restaurant chain for $135,000. The lawsuit alleged that a White male store manager ordered all the African American employees to be strip-searched in response to a White cashier's drawer turning up $100 short. When advised about the missing money by the store manager, the White cashier asserted she knew nothing about it and was permitted to leave without being searched. When the Black employees complained about the discriminatory treatment, the manager fired them. The consent decree also includes provisions for equal employment opportunity training, reporting, and posting of anti-discrimination

notices. ***EEOC v. New Capital Dimensions, Inc., dba Krystal Restaurant*2:08-cv-00089-RWS (N.D. Ga. Settled May 21, 2008).**

- In September 2007, the Commission upheld an AJ's determination that complainant was discriminated against on the bases of race (Asian American), national origin (Japanese), sex (female), and/or in retaliation for prior EEO activity when: (1) she received an unsatisfactory interim performance rating; (2) she was demoted from her GS-14 Section Chief position; and (3) management's actions created and allowed a hostile work environment. The agency was ordered to restore leave; pay complainant $50,000.00 in non-pecuniary compensatory damages and $6,944.00 in pecuniary compensatory damages; and pay $45,517.50 in attorney's fees and $786.39 for costs. ***Sugawara-Adams v. EPA,* EEOC Appeal No. 0720070050 (Sep. 10, 2007).**
- In July 2007, the Sixth Circuit agreed in part with EEOC's amicus argument that a district court improperly granted summary judgment against a Black rehabilitation aide because she presented sufficient evidence - whether categorized as "direct" or "circumstantial" - that race was a factor motivating her employer's decision not to promote her. This evidence included a White manager's statement that if the Black recommending official hired the Black aide based on her the strength of her interview and her demonstrated ability to interact and work one-on-one with clients, "people are going to think" nonetheless that she was selected "because she was Black." The manager hired a White candidate with more seniority. On appeal, the circuit court decided that "the subject of race was improperly introduced into the selection process and used as a consideration in [the] hiring decision" and that the manager's decision was motivated by the aide's race and not the selectee's experience or seniority. The court then reversed summary judgment and remanded the case for trial. ***Brewer v. Cedar Lake Lodge, Inc.*, No. 06-6327 (6th Cir. July 31, 2007) (unpublished opinion).**
- In September 2006, EEOC filed this Title VII lawsuit alleging that a nonprofit organization that provides rehabilitation services for people with disabilities discriminated against four African-American employees because of their race (delayed promotion, unfair discipline, and termination) and retaliated against three of them for complaining about racially disparate working conditions, reduction of working hours, discipline, and termination. Under the 3-year consent decree, four Black employees will share $400,000 in monetary relief and the organization will increase one Black employee's hours to no less than 20 per week to restore her eligibility for various employment benefits. ***EEOC v. Richmond of New York d/b/a Richmond Children's Center,* No. 05-CV-8342 (SCR)(MDF) (S.D.N.Y. Sept. 11, 2006).**
- In February 2006, the Commission settled for $275,000 a Title VII lawsuit alleging that defendant, an aviation services company, subjected Charging Party to discriminatory terms and conditions of employment, discipline, and demotion based on race, Black. After six years as a line service technician, defendant promoted Charging Party to supervisor. Defendant did not announce the promotion until two months after Charging Party had begun the new job and did not issue Charging Party a cell telephone or a company e-mail address during his tenure in the position. In contrast, defendant announced the promotion of Charging Party's White successor within three days and issued him a cell telephone and a company e-mail address immediately. Just 4½ months after promoting Charging Party, defendant reprimanded him and demoted him. ***EEOC v. Signature Flight Support Corp.*, No. C 05 1101 CW (N.D. Cal. Feb. 23, 2006).**
- In May 2005, the EEOC obtained a $500,000 settlement against a nursing facility in Puyallup, Washington for alleged violations of Title VII, which included the all-White care management team preparing a care plan incorporating a White family's request that no "colored girls" work with the resident; tolerating frequent use of racial slurs, including reference to a Black nurse as a "slave;" assigning Black nurses to the night shift, while giving White nurses the more desirable

day shifts; assigning Black and White employees to separate lunchtimes and lunchrooms; and twice-denying a Black nurse a promotion a staffing position for which she had several years of experience and was highly qualified. ***EEOC v. Central Park Lodges Long Term Care, Inc., d/b/a Linden Grove Health Care Center*, No. 04-5627 RBL (W.D. Wash. consent decree filed May 13, 2005).**

Compensation Disparity

- In January 2020, Jackson National Life Insurance paid Black female employees in Denver and Nashville $20.5 million to settle a racial and sexual discrimination case brought by EEOC's Denver and Phoenix offices. Twenty-one employees filed an EEOC complaint about receiving less pay than their white colleagues, being passed over for promotions, being subjected to sexual harassment and referred to by slurs, including "lazy" and "streetwalkers." In addition to the payout, the deal requires Jackson to take steps to prevent future race- and sex-based harassment, including designating an internal compliance monitor and hiring a consultant to review its policies. *EEOC v. Jackson National Life Insurance Company*, Civil Action No. 16-cv-02472-PAB-SKC (D. Colo. Jan. 9, 2020).
- In May 2019, a Mississippi federal court jury yesterday returned a verdict in favor of the EEOC and five Black dancers who were subjected to egregious race discrimination while employed by Danny's of Jackson, LLC (Danny's), doing business as Danny's Downtown Cabaret, a Jackson, Mississippi night club. The verdicts included $1.5 million in punitive damages $1.68 million in compensatory damages, and $130,550 in backpay. According to the EEOC, Danny's, and its predecessor, Baby O's Restaurant, subjected Black dancers to discriminatory terms and conditions of employment for years, including limiting the number of shifts Black dancers could work, and subjecting them to racially offensive epithets. The jury found that Danny's also forced the dancers to work at a related club, Black Diamonds, even though they were subject to arrest there because they were not licensed to work at that club. The pay and working conditions at Black Diamonds were inferior to those at Danny's, and there was less security there. The dancers who refused to work at Black Diamonds were fined and sent home, and not allowed to work at Danny's. Despite at least eight years of efforts by the EEOC, which included two EEOC charges, three prior lawsuits and contempt proceedings and three consent decrees Danny's continued to discriminate against the dancers. *EEOC v. Danny's Restaurant, LLC and Danny's of Jackson, LLC f/k/a Baby O's Restaurant, Inc. d/b/a Danny's Downtown Cabaret*, Civil Action No. 3:16-cv-00769-HTW-LRA (S.D. Miss. May 2019).
- In August 2015, the district court denied a motion to dismiss by J&R Baker Farms LLC and J&R Baker Farms Partnership in a lawsuit brought by the EEOC. The EEOC had alleged that the Farms subjected American workers, most of whom were African American, to discrimination based on national origin and race at their Colquitt County location. According to the EEOC's lawsuit, the employer favored foreign born workers or workers they believed to be foreign born, while engaging in a pattern or practice of discrimination against White American and African American workers. The agency alleges that all American workers were discriminatorily discharged, subjected to different terms and conditions of employment, and provided fewer work opportunities, based on their national origin and/or race. Regarding the disparate terms and conditions, the agency alleges that work start times were habitually delayed for White American and African American workers, that they were sent home early while foreign workers continued to work, and that they were subjected to production standards not imposed on foreign born workers. These practices led to all American workers receiving less pay than their foreign born

counterparts. ***EEOC v. J&R Baker Farms LLC, et. al***, No. 7:14-CV-136 (M.D. Ga. ***dismissal order filed*** Aug. 11, 2015).

- In December 2012, Hamilton Growers, Inc., doing business as Southern Valley Fruit and Vegetable, Inc., an agricultural farm in Norman Park, Ga., agreed to pay $500,000 to a class of American seasonal workers - many of them African-American - who, the EEOC alleged, were subjected to discrimination based on their national origin and/or race, the agency announced today. The agreement resolves a lawsuit filed by the EEOC in September 2011. The EEOC's suit had charged that the company unlawfully engaged in a pattern or practice of discrimination against American workers by firing virtually all American workers while retaining workers from Mexico during the 2009, 2010 and 2011 growing seasons. The agency also alleged that Hamilton Growers fired at least 16 African-American workers in 2009 based on race and/or national origin as their termination was coupled with race-based comments by a management official; . provided lesser job opportunities to American workers by assigning them to pick vegetables in fields which had already been picked by foreign workers, which resulted in Americans earning less pay than their Mexican counterparts; and regularly subjected American workers to different terms and conditions of employment, including delayed starting times and early stop times, or denied the opportunity to work at all, while Mexican workers were allowed to continue working. The settlement provides monetary relief to 19 persons who filed charges with the agency and other American workers harmed by the practices. Additionally, Hamilton Growers agreed to exercise good faith in hiring and retaining qualified workers of American national origin and African-American workers for all farm work positions, including supervisory positions; will implement non-discriminatory hiring measures, which include targeted recruitment and advertising, appointment of a compliance official, and training for positive equal employment opportunity management practices; will create a termination appeal process; extend rehire offers to aggrieved individuals from the 2009-2012 growing seasons; provide transportation for American workers; and limit contact between the alleged discriminating management officials and American workers. The decree also provides for posting anti-discrimination notices, record-keeping and reporting to the EEOC. ***EEOC v. Hamilton Growers, Inc.***, Civil Action No. 7:11-CV-00134-HL (N.D. Ga. settlement announced Dec. 13, 2012).
- In August 2011, an Obion County producer of pork sausage products paid $60,000 and furnished other relief to settle a wage discrimination and racial harassment lawsuit filed by the EEOC. In its lawsuit, the EEOC charged that near Union City violated federal law by paying an African-American maintenance worker less than White counterparts and subjecting him to a hostile work environment. The EEOC asserted that Williams Country Sausage gave raises and paid higher salaries to all maintenance department employees except the department's lone African-American employee and allegedly allowed a supervisor to regularly use racially offensive language toward the employee because of racial animus. The five-year consent decree enjoins the sausage company from engaging in future race discrimination, and requires annual Title VII training on employee rights, record-keeping of racial harassment complaints, and annual reports to the EEOC. The decree also requires the company to establish and enforce a written policy that will ensure that employees are protected from discrimination. ***EEOC v. Williams Country Sausage*****, Civil Action No. 1:10-CV-01263 (W.D. Tenn. Aug. 11, 2011).**
- In April 2011, the EEOC and a Bedford, Ohio, auto dealership reached a $300,000 settlement of a case alleging that the dealership permitted a general manager to harass Black employees and also discriminated against Black sales employees with regard to pay. ***EEOC v. Ganley Lincoln of Bedford Inc.*****, No. 1:07-cv-2829 (N.D. Ohio consent decree entered Apr. 19, 2011).**

- In March 2011, EEOC filed a lawsuit alleging that a provider of preventive maintenance for residential and commercial heating and air conditioning systems, which has approximately 247 employees at 13 locations within Florida, Georgia, the District of Columbia, Northern Virginia and Maryland, violated federal law by discriminating against non-Caucasian employees based on their race when it paid them less than their Caucasian colleagues. Additionally, the EEOC alleged that an African-American telemarketer was paid less than a Caucasian telemarketer in a substantially similar job. Despite complaining to management, the African-American employee's compensation remained the same until she resigned. ***EEOC v. United Air Temp / Air Conditioning & Heating, Inc.*, Civil Action No. 1:11-cv-281 (E.D. Va. filed Mar. 21, 2011)**.
- In March 2011, a television station settled a race and sex discrimination case filed by the EEOC for $45,000 and additional consideration. From 1996 to 2007, an African-American female reporter was paid lower wages than a comparable White female reporter and male reporters of all races. She was also subjected to unequal terms and conditions of employment. In addition to the damages, the station must post an anti-discrimination notice, publicize an anti-discrimination policy, and provide annual race and sex discrimination training to its employees. ***EEOC, et al. v. KOKH*, No. 5:07-cv-01043-D (W.D. Okla. March 4, 2011)**.
- In September 2010, the EEOC filed a lawsuit against a Union City, Tenn., pork company, alleging that the company engaged in race discrimination by paying an African-American maintenance worker less than non-Black employees, subjecting him to a hostile work environment, and forcing him out of his job. According to EEOC's complaint, the company gave raises and paid higher salaries to all maintenance department employees except the department's lone African-American employee because of racial animus and allowed a supervisor to regularly use racially offensive language toward the Black employee, causing the employee to quit his job to escape the abuse.***EEOC v. Williams Country Sausage Co.*, Civil Action No. 1:10-cv-01263 (W.D. Tenn. filed Sept. 30, 2010)**.
- In November 2009, a nationwide supplier of office products and services entered into an 18-month consent decree, agreeing to pay $80,000 to an African American account manager who EEOC alleged was denied appropriate wages because of his race. According to EEOC's lawsuit, the complainant was hired as a junior account manager in the supplier's Baton Rouge, Louisiana office with an annual salary of $32,500, plus commissions. At the time of his hire, complainant was told that after 6 to 8 months, he would be promoted to account manager with an increase in his base salary. The supplier promoted complainant, but did not increase his base salary. The salary of the complainant, the only African American account manager in his region, was never increased despite good performance or even when he assumed the accounts of two White employees who left the company. The complainant resigned and was replaced by a White junior account manager who earned a higher base salary than complainant had ever earned as an account manager. Under the decree, the supplier will provide web-based training to all employees at its Baton Rouge and Harahan, Louisiana offices on Title VII and defendant's antidiscrimination policies and complaint reporting procedures. The supplier also will maintain policies and procedures prohibiting race discrimination and wage disparities based on race, which will include investigation procedures and contact information for reporting complaints. Additionally, it will submit annual reports to EEOC on complaints of race discrimination and harassment it receives at its Baton Rouge and Harahan offices and their resolution. ***EEOC v. Corporate Express Office Products, Inc.*, No. 3:09-cv-00516 (M.D. La. Nov. 23, 2009)**.
- In September 2007, a federal district court in Arizona granted a motion to dismiss the EEOC's race discrimination case against a northern Arizona hospital. EEOC had alleged that the hospital, which served parts of the Navaho Nation, paid its non-White doctors thousands of dollars less

than a White American physician who performed the same work. The non-White physicians represented different races and national origins, including Asian, Native American, Nigerian, Puerto Rican, and Pakistani. When they, as well as a former medical director, sought redress of the wage difference and filed discrimination charges with the EEOC, EEOC alleged that the hospital retaliated against them with threats of termination and threats of adverse changes to the terms and conditions of their employment. ***EEOC v. Navajo Health Foundation-Sage Memorial Hospital, Inc.*, No. 06-CV-2125-PHX-DGC (D. Ariz. Sept. 7, 2007)**.

- In August 2009, a Washington Park, Ill., packaging and warehousing company agreed to pay $57,500 and provide training to settle a race discrimination and retaliation lawsuit alleging that the company failed to provide a Black employee the pay raise and health insurance coverage provided to his White co-workers, and then fired him in retaliation for filing a charge of race discrimination with the EEOC. ***EEOC v. Material Resources, LLC, d/b/a Gateway Co-Packing Co.*, No. 3:08-245-MJR (S.D. Ill. August 14, 2009).**
- In March 2007, EEOC reached a $60,000 settlement in its Title VII lawsuit against Stock Building Supply d/b/a Stuart Lumber alleging that defendant did not give Charging Party a salary increase when he was promoted to a managerial position while White employees who were promoted were given salary increases. ***EEOC v. Stock Building Supply f/k/a Carolina Holdings, Inc. d/b/a Stuart Lumber Co.,* Civil Action No. 2:05-CV-306-FTM-29 (M.D. Fla. March 26, 2007).**
- In August 2006, the EEOC resolved this Title VII/Equal Pay Act case alleging that the largest electronic screen-based equity securities market in the United States failed to promote its only Black female into higher-level Research Analyst positions in its Economic Research Department and paid her less than White male Research Analysts, on the basis of race and sex. The case settled for $75,000 and a raise in her annual salary. ***EEOC v. NASDAQ Stock Market, Inc.*, No. 06-1066-RWT (D. Md. Aug. 30, 2006).**
- In May 2006, Orkin, Inc. paid $75,000 to settle a race discrimination lawsuit filed by the EEOC, alleging that Orkin refused to reinstate a Black former employee to a service manager position at the Memphis location and paid him less when he held the position because of his race. ***EEOC v. Orkin, Inc.,* No. 05-2657-Ma/P (W.D. Tenn. May 26, 2006).**

Hostile Work Environment

- In March 2020, Baltimore County-based Bay Country Professional Concrete paid $74,000 and furnished significant equitable relief to settle two federal harassment and retaliation lawsuits by the EEOC. In the first lawsuit, the EEOC charged that Bay Country's owner repeatedly used racial slurs and fired a secretary in retaliation for her opposition to the racial harassment. In the second lawsuit, the EEOC said that Bay Country subjected a concrete finisher, who is male and African American, to racial and sexual harassment by a foreman and co-workers. The harassment included racial slurs, explicit sexual comments and gestures and threats. The concrete finisher called the police to file charges after one co-worker groped him and another intentionally poked him with a shovel handle, the EEOC said. According to the suit, the concrete finisher complained about the harassment and Bay Country fired him in retaliation the same day. *EEOC v. Bay Country Professional Concrete LLC*, Civil Action No. 1:19-cv-02846-ELH (Mar. 31, 2020); *EEOC v. Bay Country Professional Concrete LLC*, Civil Action No. 1:19-cv-02848-ELH (Mar. 31, 2020).
- In March 2020, G.N.T, Inc., doing business as GNT Foods, a grocery store located in East Point, Ga., paid $60,000 and furnished other relief to settle a racial harassment and retaliation lawsuit

filed by the EEOC. Corey Bussey, Justin Jones and Christopher Evans worked in the meat department at GNT Foods. According to the EEOC's lawsuit, the three African American men endured the store owner's daily use of racial slurs, one employee was slapped by the owner, and racially offensive posters of monkeys were prominently displayed in the workplace to humiliate the Black employees. The harassing behavior continued despite numerous complaints by all three employees. In addition to the monetary damages to the three men, the two-year consent decree requires GNT Foods to provide employment discrimination training to its employees, to post its policies and anti-discrimination notice, and to comply with reporting and monitoring requirements. *EEOC v. GNT, Inc.*, Civil Action No. 1:17-CV-3545-MHC-LTW (N.D. Ga. Mar. 25, 2020).

- In February 2020, an Illinois fencing company paid $25,000 to settle a race harassment case brought by the EEOC. According to the EEOC's lawsuit, the company's employees and warehouse manager verbally harassed an African American employee based on his race by calling him racial slurs and making offensive comments about Black people in his presence. When the Black employee complained, no action was taken and the mistreatment continued. Additionally, two coworkers attempted to put his head in a noose that was hanging in the warehouse; the warehouse manager saw the noose and laughed despite company policies that obligated him to report the harassment. After the noose incident, the Black employee quit his job and filed a constructive discharge suit. The judge ruled in EEOC's favor on summary judgment. Thereafter, the parties agreed to settle the matter. The two-year consent decree requires the company to strengthen its discrimination complaint procedure and develop and implement investigation procedures. The decree also mandates training of employees and reporting to the EEOC any future complaints of race harassment. *EEOC v. Driven Fence, Inc.*, Civil Action No. 17 C 6817 (N.D. Ill. Feb. 18, 2020)
- In November 2019, On The Border Acquisitions, LLC, doing business as On The Border Mexican Grill & Cantina (OTB), paid $100,000 and provided other relief to settle an EEOC race harassment lawsuit. EEOC alleged that OTB failed to act when several employees at its Holtsville, New York location subjected an African-American cook to harassment based on his race, including repeatedly calling him racial slurs. *EEOC v. On The Border Acquisitions, LLC, d/b/a On The Border Mexican Grill & Cantina*, Civil Action No. 2:18-cv-05122 (E.D.N.Y. Nov. xx 2019).
- In October 2019, a Phoenix-based moving company accused of "pervasive" racial harassment against a Black employee will pay $54,000 to settle an EEOC lawsuit. According to the EEOC's lawsuit, a supervisor at Arizona Discount Movers frequently made racist comments to an African American employee named Clinton Lee. The EEOC alleged that the supervisor also told Lee he could not enter the building because they were having a Ku Klux Klan meeting and put a statue of a jockey on his desk with a whip in the jockey's hand tied in a noose. He labelled the statue "Clint." According to the EEOC, the same supervisor hung a troll doll painted black with a Post-it affixed to the doll that read, "Clint King." The doll was hung from a hook and displayed in the middle of the facility. The EEOC also alleged that Lee's supervisor pointed to the doll and said "Hey Clint look! That's you!" Lee complained to the owner, who told Lee to take the doll down if he did not like it. Lee felt he had to resign because of the harassment, and the EEOC further alleged that, since 2011, Arizona Discount Movers has required its employees sign a two-page "Rules and Employee Agreement," which included both "Negative attitudes, fighting, complainers will not be tolerated here" and "Drugs, fighting, foul language, racism, arguing will be tolerated." In addition to the monetary settlement, the company is required to write an apology letter and a positive letter of reference for its former employee. *EEOC v. Arizona Discount Movers*, Civil Action No. 2:18-cv-01966-HRH (D. Ariz. Oct. 15, 2019).

- In September 2019, the EEOC Office of Federal Operations reversed an agency finding of no discrimination. Complainant filed an EEO complaint alleging that the U.S. Department of Transportation discriminated against her on the bases of race (African-American) and color (Black), when on November 11, 2016, she was subjected to harassment by a coworker. Complainant indicated that the coworker who also was the president of the local union sent her an email with the subject line "Asshole" and stated the following: If [Complainant] wasn't such a N** who would run an[d] yell racism tomorrow. At work. I would love to answer her with this…Those people are pieces of shit and hopefully they try that with me so I can gun them down." The Agency found no discrimination. The appellate decision found that Complainant was subjected to harassment when she received the email from the coworker. The decision then determined that the Agency erred finding that it took prompt action. The decision noted that the Agency took six months to engage in an internal investigation and issue the coworker a proposed 30-day suspension. The Agency failed to inform the Commission what, if any, final disciplinary action was issued against the coworker. Accordingly, the decision held that the Agency failed to take prompt action to meet its affirmative defense. As such, the decision concluded that Complainant had been subjected to harassment based on her race and color. The decision remanded the matter to the Agency for a determination on Complainant's entitlement to compensatory damages, for training and reconsideration of discipline for the co-worker, for training for management focusing on addressing harassment, and for consideration of disciplinary action against the management officials who failed to respond to Complainant's claims of harassment in a prompt manner. *Sharon M. v. DOT*, EEOC Appeal No. 0120180192 (Sep. 25, 2019).
- In September 2019, a tire, wheels and auto service company, agreed to pay $55,000 and furnish other relief to settle a racial harassment and retaliation lawsuit filed by the EEOC. According to the EEOC's lawsuit, the store manager of the Port Huron, Mich., location made derogatory, race-based comments to the only African American employee. The remarks included calling the employee "cricket" and "dumb-dumb" and telling him that "blacks don't get Saturdays off." The comments were sometimes accompanied by demeaning physical contact, such as slapping the employee in the head or shoving him, the EEOC said. After the employee formally complained to human resources about the harassment, he was fired within 48 hours. The manager was given a written warning for "shop talk" and "horseplay." The three-year consent decree provides that the company also will take meaningful steps toward ensuring a work environment that is free from harassment by redistributing its anti-discrimination policy and providing annual anti-harassment training for certain human resources professionals and managers. The decree also required the company to report future complaints of race harassment and any measures taken to investigate and remedy such complaints. *EEOC v. Belle Tire Distributors, Inc.*, Case No. 2:18-cv-13795 (E.D. Mich. Sept. 24, 2019).
- In June 2019, Aaron's Inc. paid $425,000 and provided anti-discrimination training to its New York City area workforce to settle a federal government lawsuit accusing it of racial harassment. The EEOC alleged in a December 2017 complaint that the rent-to-own furniture chain subjected Black employees at a Queens, N.Y., warehouse to racist name-calling by two managers. The same managers also regularly assigned Black employees to longer routes with heavier items to deliver than they assigned White employees, the EEOC alleged. The four-year agreement requires the company to furnish semi-annual compliance reports to the EEOC, including regarding the whereabouts of the two managers accused of the alleged harassment. It must also place a notation in the personnel file of both managers stating that they were the

subject of a racial harassment complaint. *EEOC v. Aaron's, Inc.*, No. 1:17-cv-07273 (E.D.N.Y. consent decree entered 6/4/19).

- In April 2019, A&F Fire Protection, Inc., a NY fire sprinkler and standpipe contractor, paid $407,500 to settle a race discrimination lawsuit in which EEOC alleged that Black and Hispanic employees were frequently subjected to racial remarks by managers and coworkers and a supervisor who used gorilla sounds as a ringtone for a Black employee. A Hispanic employee said his supervisor called him an anti-Hispanic slur and referred to him as a "dumb-in-a-can" in reference to his Dominican national origin. A Black assistant superintendent said that his contact information was saved in his supervisor's cell phone contacts as "BBG" and when he called the phone would say "Big, Black gorilla is calling" and the ringtone would make gorilla sounds. A Puerto Rican employee reported that a coworker said that the company was starting to look like "an immigration camp" because of all the Black and Hispanic employees. *EEOC v. A&F Fire Protection, Inc.*, No. 2:17-04745 (E.D.N.Y. consent decree filed Apr. 23, 2019).
- In April 2019, a Jacksonville-based licensed sports merchandise company agreed to pay a Black former employee $57,050 in back pay and $265,000 in compensatory damages, a total of $322,050 as part of a consent decree to settle an EEOC lawsuit. The lawsuit alleged that a Black employee was asked if he could read because "a lot of you guys can't read," and that a general manager referred to Black employees as "monkeys" or "Africans" and many other accusations. The employee also claimed he was hit with a racial slur from a team leader on his first day of work and that after voicing complaints about what he saw as unfair treatment of Black employees, his supervisor "told him that he would never be promoted." *EEOC v. Fanatics Retail Group*, *Inc.*, Civil Action No. 3:18-cv-900-J-32PDB (M.D. Fla. consent decree filed April 17, 2019).
- In November 2018, a Texas-based oil and gas company operating in Tioga, N.D., paid $50,000 and furnished other relief to settle an EEOC racial harassment lawsuit. The EEOC's lawsuit charged that Murex Petroleum Corp. violated federal law when it subjected an African-American roustabout to racial harassment by his White coworkers. The harassment included the White coworkers calling the Black employee racial slurs such as "spook," "spade" and "Buckwheat." The coworkers also made racially derogatory comments including using the racially offensive term "n----r-rigged," which was witnessed by the employee's supervisor who took no action to stop it. According to the EEOC's lawsuit, another African-American employee complained to a high-level executive at the company, but, again, no action was taken to stop or prevent the harassment. *EEOC v. Murex Petroleum Corp.*, Civil Action No. 1:18-cv-00169-CSM (D.N.D. Nov. 19, 2018).
- In October 2018, MPW Industrial Services, Inc., a Hebron, Ohio industrial cleaning company, paid $170,0000 to settle a race discrimination lawsuit filed by EEOC. According to the EEOC's lawsuit, MPW subjected two African-American employees to racial harassment, including hangman's nooses, racial epithets, racist comments and jokes, and an alleged KKK meeting at the worksite. The parties reached an agreement and filed a joint motion to enter a consent decree. The motion was approved by the court and the consent decree was entered on Oct. 23. Under the decree, which settles the suit, MPW Industrial Services is required to pay $170,000 to the two former employees who experienced the racial harassment. The decree also provides for injunctive and equitable relief and, in particular, requires that MPW train supervisors and managers to spot and prevent racial harassment in the future. *EEOC v. MPW Industrial Services, Inc.*, Case No. 1:18-cv-00063 (S.D. Ohio consent decree filed Oct. 23, 2018).
- In October 2018, Floyd's Equipment Inc., a Sikeston, Mo. contractor, paid $25,000 and furnished other relief to settle an employment discrimination lawsuit filed by the EEOC. The EEOC filed suit against the company in September 2017, charging that Floyd's had engaged in race

discrimination when a Floyd foreman repeatedly used the slur "n----r." After an African-American employee complained, the foreman angrily confronted him and rather than disciplining the harasser, the company transferred Woodall from his assignment as a backhoe operator to a less desirable job doing pick-and-shovel work in another state. Ultimately, Floyd's fired Woodall. *EEOC v. Floyd's Equipment, Inc.*, Civil Action No. 1:17-cv-00175-SNLJ (E.D. Mo. Oct. 17, 2018).

- In September 2018, Big 5 store in Oak Harbor, Island County settled a racial harassment and retaliation case for $165,000 and other remedial relief. According to the EEOC lawsuit, a management trainee who was the only African-American employee at the store was subjected to a “litany of unremedied racial comments” including being called "spook," "boy," and "King Kong" and told that he had the "face of a janitor" from store management. Additionally, EEOC alleged that an assistant store manager threatened to lynch him. The trainee stressed by the harassment and retaliation after reporting the harassment to upper management, took leaves from work and was eventually fired. Pursuant to a three-year consent decree, the store also is required to provide training and ensure that it has appropriate anti-harassment policies in place. *EEOC v. Big 5 Sporting Goods Corp.,* Civil Number 2:17-CV-01098 (W.D. Wash. Sept. 2018).
- In July 2018, a Texas-based oilfield service company operating in Williston, N.D., paid $39,900 to an equipment operator who alleged that he was subjected to a racially hostile work environment because of his race, Asian, and then fired after he complained about it. According to the EEOC's lawsuit, the employee was racially harassed by his white supervisor. The racial harassment included the supervisor calling him "little Asian" and "Chow" based on the Asian character in the movie "Hangover." On one occasion, the supervisor physically assaulted the employee when he poured a bottle of water on Villanueva's head, grabbed his head, and pushed it down towards a table, the EEOC charged. Although the employee complained about the harassment to supervisors and reported the assault to the police, he was fired. *EEOC v. Cudd Energy Services*, Civil Action No. 4:15-cv-00037-LLP-ARS (D.N.D. consent decree filed July 19, 2018).
- In January 2018, a water and waste-water services company in Bear, Delaware paid $150,000 to settle an EEOC lawsuit alleging racial harassment. According to the EEOC, an African-American foreman repeatedly had racial slurs directed at him by a White superintendent and other White foremen. The Black foreman complained to company management about the slurs to which he and other African-American employees were subjected, including epithets such as “n—-r,” “monkey” and “boy.” The company not only failed to stop the harassment, but in fact promoted one of the wrongdoers and assigned the Black foreman to work under his supervision on a project. In May 2016, the company fired him allegedly in retaliation for complaining about the racially hostile work environment. Under a two-year consent decree, the company is prohibited from engaging in discrimination based on race or unlawful retaliation in the future and must provide training on federal anti-discrimination laws, including preventing harassment. The company also will implement and disseminate to all employees a revised anti-harassment policy, and will also post a notice regarding the settlement. The company will also provide a neutral reference letter to the terminated employee. *EEOC v. Aqua America Inc., dba Aqua Resources Inc*., No. 2:17-cv-04346-JS (E.D. Pa. Jan. 23, 2018).
- In October 2017, Reliable Inc., doing business as Reliable Nissan, agreed to settle charges of discrimination based on race, national origin, and religion, along with retaliation. The agreement follows conciliation between the EEOC and Reliable Nissan over claims that two Reliable Nissan Managers repeatedly used the "N-word" during a sales meeting, and referred to African, African-American, Native American, Muslim and Hispanic employees in a derogatory manner.

Employees alleged that managers made offensive jokes about Muslim and Native American employees' religious practices and traditions, and used racial epithets like "n----r," "drunken Indians," "red." and "redskins." Racially offensive pictures targeted against minority employees were also posted in the workplace. As part of the conciliation agreement, Reliable Nissan agreed to pay a total of $205,000 to three employees who filed discrimination charges with the EEOC and 11 other minority employees who were subjected to the hostile work environment. The company also agreed to provide annual training for two years for its employees, including managers and human resources employees. Additionally, Reliable Nissan agreed to review its policies and procedures to ensure that employees have a mechanism for reporting discrimination and to make certain that each complaint will be appropriately investigated.

- In September 2017, a Hugo, Minnesota construction company paid $125,000 to settle a racial harassment lawsuit filed by the EEOC. The EEOC's lawsuit charged that JL Schwieters Construction, Inc. violated federal law when it subjected two Black employees to a hostile work environment, including physical threats, based on their race. According to the EEOC's lawsuit, two Black carpenters were subjected to racial harassment during their employment by a White supervisor, who made racially derogatory comments including calling them "n----r." The supervisor also made a noose out of electrical wire and threatened to hang them, the EEOC charged. ***EEOC v. JL Schwieters Construction, Inc***., Civil Action No. 16-cv-03823 WMW/FLN (D. Minn. Sep. 6, 2017).
- In July 2017, the largest producer of farmed shellfish in the United States, paid $160,000 and implemented other relief to settle an EEOC lawsuit. According to the EEOC's suit, a Black maintenance mechanic at the Taylor Shellfish's Samish Bay Farm faced repeated demeaning comments about his race, including the use of the "N word," "spook" and "boy." His direct supervisor commented that his father used to run "your kind" out of town. When the mechanic reported this behavior to management, the supervisor retaliated against him and Taylor Shellfish simply advised him to "put his head down and do what he was told." After being wrongly accused and disciplined for insubordination, he felt he had no other choice but to quit his job. Under the consent decree resolving this case, Taylor Shellfish has agreed to implement new policies, conduct extensive training for employees and management, post an anti-discrimination notice at the workplace and report compliance to the EEOC for a three-year period. ***EEOC v. Taylor Shellfish Company, Inc.***, 2:16-CV-01517 (W.D. Wash. July 31, 2017).
- In July 2016, the Fourth Circuit reversed summary judgment in an employment discrimination case alleging race, national origin, religion, and pregnancy discrimination, hostile work environment, and retaliation in violation of Title VII and 42 U.S.C. § 1981, in which the EEOC filed an amicus brief in support of the plaintiff. Plaintiff Monica Guessous is an Arab-American Muslim woman from Morocco who worked for Fairview Property Investments, LLC until she was terminated from her position as a bookkeeping assistant by her supervisor, Greg Washenko, Fairview's Chief Financial Officer. During her work tenure, Washenko made several derogatory comments about Morrocans, Muslims and Middle Easterns, often referring to them as "terrorists" and "crooks." Additionally, he complained about plaintiff's request for a three-month maternity leave and refused to transfer back her job duties when she returned to work. By failing to address numerous comments that were open to a racially motivated interpretation, and by circumscribing its analysis to just one comment without reviewing the totality of the circumstances, the district court committed reversible error in its grant of summary judgment for Fairview on the discrimination and hostile work environment claims. The Fourth Circuit also decided that discriminatory discrete acts could support a hostile work environment claim even if it is separately actionable. ***Guessous v. Fairview Prop. Invest.***, No. 15-1055 (4th Cir. 7/6/2016).

- In January 2015, Carolina Metal Finishing, LLC, a Bishopville, S.C. based metal finishing company, paid $40,000 and furnished significant remedial relief to settle a race harassment lawsuit filed by the EEOC. According to the EEOC's complaint, a Black powder coater at the Bishopville plant was repeatedly subjected to racial slurs by two White employees. The comments included repeated use of the "N-word." The Black employee allegedly complained to company management, but the harassment continued. Within hours of his final complaint, the coater was fired, allegedly in retaliation for his complaints of racial harassment. In addition to paying $40,000 in monetary relief, the company must abide by the terms of a two-year consent decree resolving the case. The consent decree enjoins Carolina Metal from engaging in future racial discrimination. The decree also requires the company to conduct anti-discrimination training at its Bishopville facility; post a notice about the settlement at that facility; implement a formal anti-discriminatory policy prohibiting racial discrimination; and report certain complaints of conduct that could constitute discrimination under Title VII to the EEOC for monitoring. ***EEOC v. Carolina Metal Finishing, LLC*, No. 3:14-cv-03815 (D.S.C. Jan. 8, 2015).**
- In December 2014, Swissport Fueling, Inc., which fuels aircraft at Phoenix Sky Harbor Airport, paid $250,000 and furnish other relief to settle a lawsuit for race and national origin harassment filed by the EEOC. The EEOC's lawsuit was brought to obtain relief for fuelers who were from various African nations, including Sudan, Nigeria, Ghana and Sierra Leone. The lawsuit alleged that a Swissport manager routinely called the African fuelers "monkeys" in various degrading ways. A manager also made demeaning references to slavery to the fuelers, such as telling them: "You guys are lucky I pay you because way back then, you did not get paid"; "You are lucky to be paid. A long time ago Blacks were doing this for free"; "At one time, you people would not be paid"; and "Blacks work for free." EEOC alleged that the African fuelers reported the harassment verbally and in writing, including by signing a written petition and delivering it to the office of Swissport's general manager at the Phoenix facility to try to stop the harassment, but the abuse continued. ***EEOC v. Swissport Fueling, Inc.*, No. 2:10-cv-02101(GMS) (D. Ariz. Nov. 25, 2014).**
- In August 2014, a Thomasville mattress company agreed to pay a combined $42,000 to two Black former workers to settle an EEOC complaint that alleged they were unlawfully fired. The complaint alleged that they complained to the company about racial comments that included the "N-word" made by a White employee between June and August 2012, but the harassment continued. The three-year settlement includes the company's agreement to not permit or maintain a hostile work environment based on race, not to discriminate or retaliate against any employees because of opposition to any unlawful practice, a posting of procedures for reporting discrimination and harassment, the submission of a report to EEOC regarding internal discrimination and harassment complaints, and the provision of a neutral letter of reference that states one of the affected employees left employment because he was laid off. ***EEOC v. Carolina Mattress Guild Inc.*, No. 1:13-cv-00706 (M.D.N.C. consent decree entered Aug. 1, 2014).**
- In March 2014, Titan Waste Services, Inc., a Milton, Fla., waste disposal and recycling company, was ordered to pay $228,603 for violating federal law by harassing and then firing a truck driver because of his race. According to the EEOC's suit, Titan's highest-level managers subjected its sole Black driver, Michael Brooks, to discriminatory treatment during his employment, including assigning White drivers more favorable routes, requiring Brooks to perform degrading and unsafe work assignments. Brooks was also subjected to harassment such as racial slurs and racially derogatory insults, taunting and racial stereotypes, including the use of the "N-word." According to the EEOC, shortly before the 2008 presidential election, Titan's facility manager

terminated Brooks without cause after discussing the upcoming election with him. After Titan's attorney withdrew from the case, the court found Titan did not continue to assert its defenses and ignored several orders of the court, displaying a reckless and willful disregard for the judicial proceedings. As a result, a default judgment was entered by U.S. District Judge M. Casey Rodgers, based upon evidence submitted by the EEOC and Titan was ordered to pay lost wages and other damages suffered by Brooks. ***EEOC v. Titan Waste Services, Inc.*, No. 3:10-cv-00379 (N.D. Fla. Mar. 10, 2014).**

- In March 2014, Olympia Construction, Inc. paid $100,000 jointly to three former employees to resolve a race harassment and retaliation lawsuit filed by the EEOC. The EEOC's lawsuit charged that Olympia subjected Adrian Soles, Anthony Moorer and George McWilliams to racial slurs and intimidation. The agency also said that Olympia terminated the victims because they complained to the EEOC. ***EEOC v. Olympia Constr.*, No. 2:13-cv-155 (S.D. Ala. Feb. 27, 2014).**
- In June 2013, a national food distributor paid $15,000 in compensatory damages to three former employees to resolve an EEOC race discrimination lawsuit alleging that its Mason City warehouse failed for months to remove racist graffiti in a men's restroom that included a swastika and references to the Ku Klux Klan, despite complaints from an African-American employee. Specifically, an African-American employee complained to management that he had seen graffiti reading "N*****s STINK" in a men's restroom. The EEOC alleged that the distributor's supervisors, including the Black employee's supervisor, used that restroom, yet the racist message remained for 30 days after he complained. The EEOC's suit also alleged that, about a week after the distributor finally removed the graffiti, a second message appeared, this time stating "KKK I hate N*****s." The EEOC alleged that this second message remained visible for over three months after the employee alerted the EEOC to the situation. In addition to the monetary relief, the consent decree requires the company will repaint the restrooms and train employees on race discrimination within 45 days. ***EEOC v. MBM Corp.*, No. 3:12-cv-3069(LTS) (N.D. Iowa consent decree granted June 24, 2013).**
- In May 2013, a Tyler, Texas-based petroleum and gas industry equipment provider paid $150,000 and furnished other relief to settle an EEOC racial harassment and retaliation suit. According to the EEOC's suit, an African-American employee of Torqued-Up assigned to a field crew in South Texas experienced racial harassment in the form of racial slurs and epithets from two employees who supervised him on the job. According to the EEOC, the employee, who had 30 years of experience in the oil industry, reported the racial harassment to Torqued-Up's management, but instead of putting a stop to it, the company unlawfully retaliated against him. The punishment included removing the man from his crew and assigning him to perform menial tasks such as washing trucks and sweeping, rather than the oil field work that he had been hired to perform, and reducing his work hours, thereby reducing his income. ***EEOC v. Torqued-Up Energy Services, Inc.*, No. 6:12-cv-00051 (S.D. Tex. May 28, 2013).**
- In April 2013, a Utah construction company paid three former employees $230,000 and improved its future employment practices to settle an EEOC race harassment and retaliation lawsuit. The EEOC filed suit against the company in September 2010, charging that the company subjected Antonio and Joby Bratcher and a class of African-American employees to racial harassment and retaliation. In a ruling last year, Judge Dale A. Kimball found that the Bratchers and class member James Buie were subjected to an objectively hostile work environment based on race. The court observed that the site superintendent, Paul E. Facer, referred to the African-American employees as "n----rs" or a variation of that word almost every time he spoke to them. Other Holmes employees used the term "n----r-rigging" while working there, and racist graffiti was evident both inside and outside portable toilets on the work site. In addition to the

monetary relief, Holmes also committed to implement several affirmative steps to prevent and address race-based conduct on the worksite. These measures include: a comprehensive training regimen on discrimination (including racial discrimination and harassment); discussions of harassment in work site meetings on a monthly basis; the provision of an external ombudsman to receive and investigate complaints of discrimination or retaliation; and a detailed review and revision of Holmes' policies and procedures concerning protected-class discrimination and retaliation. ***EEOC v. Holmes & Holmes Industrial, Inc.*, No. 2:10-CV-955 (D. Utah consent decree filed Apr. 12, 2013).**

- In March 2013, EEOC and Day & Zimmerman NPS, a leading supplier of maintenance, labor, and construction services to the power industry, filed a consent decree resolving EEOC's claims that Day & Zimmerman violated federal law by creating a hostile work environment for an African-American laborer for $190,000. In the lawsuit, EEOC alleged that Day & Zimmerman, through its foreman at the Poletti Power Plant in Astoria, Queens, N.Y., had subjected Carlos Hughes to physical and verbal racial harassment that included racial insults and derogatory stories referring to African Americans as stupid and incompetent, as well as frequently tripping Hughes, and once kicking him in the buttocks. The foreman also told racist jokes in the workplace, and made negative comments about African Americans; including that Sean Bell (shot by the police at a nightclub) deserved to be shot, and threatened that candidate Barack Obama would be shot before the country allowed a Black president. EEOC alleged that Hughes complained to management many times for more than a year regarding the harassment, and that when Day & Zimmerman finally arranged a meeting in response, it disciplined Hughes less than an hour later, and then fired him that same day, citing a false safety violation as a reason. ***EEOC v. Day & Zimmerman NPS, Inc.*, No. 1:11-cv-04741 (E.D.N.Y. consent decree filed Mar. 12, 2013).**
- The Commission alleged that Whirlpool violated Title VII of the Civil Rights Act of 1964 when it did nothing to stop a White male co-worker at a Whirlpool plant in LaVergne, Tenn., from harassing an African-American female employee because of her race and sex. The abuse lasted for two months and escalated when the co-worker physically assaulted the Black employee and inflicted serious permanent injuries. During a four-day bench trial, the court heard evidence that the employee repeatedly reported offensive verbal conduct and gestures by the co-worker to Whirlpool management before she was violently assaulted, without any corrective action by the company. The trial also established that the employee suffered devastating permanent mental injuries that will prevent her from working again as a result of the assault. At the conclusion of the bench trial, the judge entered a final judgment and awarded the employee a total of $1,073,261 in back pay, front pay and compensatory damages on December 21, 2009. Whirlpool filed a motion to alter or amend the judgment on January 15, 2010 which the district court denied on March 31, 2011. On April 26, 2011, Whirlpool appealed the judgment to the U.S. Court of Appeals for the Sixth Circuit. The company withdrew its appeal on June 11, 2012 and agreed settle the case with the EEOC and plaintiff intervener for $1 million and court costs. The plant where the discrimination occurred had closed during the litigation period. ***EEOC v. Whirlpool Corp.*, No. 11-5508 (6th Cir. June 12, 2012) (granting joint motion to dismiss).**
- Ready Mix paid a total of $400,000 in compensatory damages to be apportioned among the seven class members to settle an EEOC lawsuit. The Commission had alleged Ready Mix USA LLC, doing business as Couch Ready Mix USA LLC, subjected a class of African American males at Ready Mix's Montgomery-area facilities to a racially hostile work environment. A noose was displayed in the worksite, derogatory racial language, including references to the Ku Klux Klan, was used by a direct supervisor and manager and that race-based name calling occurred. Ready Mix denies that racial harassment occurred at its worksites. The two-year decree enjoins Ready

Mix from engaging in further racial harassment or retaliation and requires that the company conduct EEO training. Ready Mix will be required to modify its policies to ensure that racial harassment is prohibited and a system for investigation of complaints is in place. The company must also report certain complaints of harassment or retaliation to the EEOC for monitoring. ***EEOC v. Ready Mix USA LLC*, No. 2:09-cv-00923 (M.D. Ala. Feb. 3, 2012).**

- In January 2013, a federal jury found that two Black employees of a North Carolina trucking company were subjected to a racially hostile work environment and awarded them $200,000 in damages. The jury also found that one employee was fired in retaliation for complaining about the hostile environment. In a complaint filed in June 2011, EEOC alleged that, from at least May 2007 through June 2008, one Black employee was subjected to derogatory and threatening comments based on his race by his supervisor and co-workers, and that a coworker mechanic displayed a noose and asked him if he wanted to "hang from our family tree." EEOC also alleged that the mechanic also repeatedly and regularly called the employee "nigger" and "Tyrone," a term the co-worker used to refer to unknown black individuals. Evidence also revealed that A.C. Widenhouse's general manager and the employee's supervisor also regularly made racial comments and used racial slurs, such as asking him if he would be the coon in a "coon hunt" and alerting him that if one of his daughters brought home a Black man, he would kill them both. The employee also frequently heard other co-workers use racial slurs such as "nigger" and "monkey" over the radio when communicating with each other. The second Black employee testified that, when he was hired in 2005, he was the company's only African American and was told he was the "token black." The general manager also talked about a noose and having "friends" visit in the middle of the night as threats to Floyd. Both employees reported the racial harassment, but company supervisors and officers failed to address the hostile work environment. The jury awarded the former employees $50,000 in compensatory damages and $75,000 each in punitive damages. ***EEOC v. A.C. Widenhouse Inc.,* No. 1:11-cv-498 (M.D.N.C. verdict filed Jan. 28, 2013).**
- In January 2013, Emmert International agreed to settle an employment discrimination lawsuit filed by EEOC that charged the company harassed and retaliated against employees in violation of federal law. Specifically, the EEOC's lawsuit alleged that the company's foreman and other Emmert employees repeatedly harassed two employees, one African American and the other Caucasian, while working on the Odd Fellows Hall project in Salt Lake City. Emmert's foreman and employees regularly used the "n-word," called the Black employee "boy," called the White employee a "n---- lover," and made racial jokes and comments. The EEOC also alleged that Emmert International retaliated against Black employee for complaining about the harassment. The 24- month consent decree requires the company to pay $180,000 to the two employees, provide training to its staff on unlawful employment discrimination, and to review and revise its policies on workplace discrimination. The decree also requires Emmert International to post notices explaining federal laws against workplace discrimination. ***EEOC v. Emmert Industrial Corp., d/b/a Emmert International*, No. 2:11-CV-00920CW (D. Ariz. Jan. 7, 2013).**
- In October 2012, a district court ruled that the EEOC proved that a construction site where a White supervisor regularly used racial slurs was objectively a hostile work environment for Black employees under Title VII of the 1964 Civil Rights Act. It also decided, however, that a jury must determine if the three Black plaintiffs found the workplace subjectively offensive because, although their repeated complaints indicate they were offended, a jury must resolve factual issues raised by some co-workers' testimony that the plaintiffs actually did not seem bothered by the harasser's conduct. Ruling on EEOC's motion for partial summary judgment, the court said the company's admissions that site superintendent/project manager referred to three Black

plaintiff-intervenors as "nigger" or "nigga" on a near-daily basis and told racial jokes using those terms and other offensive epithets establishes an objective racially hostile work environment. The court said the undisputed evidence also indicated that human resources manager told the company's employees during a safety meeting not to "nigger rig their jobs"; that company management was aware the worksite's portable toilets were covered with racist graffiti; and that other White supervisors and employees routinely used racial epithets, including an incident where a White supervisor commented regarding rap music being played in a van transporting employees to the worksite, "I'm not listening to this nigger jig." When confronted by a Black employee about the comment, the White supervisor allegedly replied: "I can see where your feelings were hurt, but there is a difference between niggers and blacks, Mexicans and spics. But I see you as a black man." ***EEOC v. Holmes & Holmes Indus. Inc.*, No. 10-955 (D. Utah Oct. 10, 2012).**

- In March 2012, the EEOC sued a restaurant in Menomonie, Wisconsin because its managers allegedly posted images of a noose, a Klan hood and other racist depictions, including a dollar bill that was defaced with a noose around the neck of a Black-faced George Washington, swastikas, and the image of a man in a Ku Klux Klan hood. A Black employee to complained and then was fired. ***EEOC v. Northern Star Hospitality Inc.*, Civil Action No. 12-cv-214 (W.D. Wis. Mar. 27, 2012).**
- In February 2012, major cement and concrete products company, paid $400,000 and furnished other relief to settle am EEOC lawsuit alleging racial harassment. The EEOC charged in its lawsuit that a class of African American males at Ready Mix's Montgomery-area facilities was subjected to a racially hostile work environment. The EEOC said that a noose was displayed in the worksite, that derogatory racial language, including references to the Ku Klux Klan, was used by a direct supervisor and manager and that race-based name calling occurred. Ready Mix denies that racial harassment occurred at its worksites. The two-year decree also enjoins Ready Mix from engaging in further racial harassment or retaliation and requires that the company conduct EEO training. Ready Mix will be required to modify its policies to ensure that racial harassment is prohibited and a system for investigation of complaints is in place. The company must also report certain complaints of harassment or retaliation to the EEOC for monitoring. ***EEOC v. Ready Mix USA d/b/a Couch Ready Mix USA LLC*, No. 2:09-CV-923 (M.D. Ala. *consent decree announced* Feb. 21, 2012).**
- In August 2011, a federal district court entered a default judgment in favor of the EEOC in its lawsuit alleging that a pipeline construction company permitted several African American employees to be subjected to hanging nooses in the workplace even after they complained about the offensive displays. The company failed to retain counsel to prosecute the lawsuit. The court granted the EEOC's motion for a default judgment and awarded $50,000 to five claimants. The court also enjoined the company from discriminating on the basis of race or protected conduct in violation of Title VII. ***EEOC v. L.A. Pipeline Constr. Co.*, No. 2:08-CV-840 (S.D. Ohio Aug. 5, 2011).**
- In June 2011, Herzog Roofing, Inc., a Detroit Lakes, Minn., roofing company, agreed in a pre-suit settlement to pay $71,500 to seven Black, Hispanic, and American Indian employees to settle racial harassment and retaliation charges, alleging that the targeted employees were frequently subjected to racial epithets, racial jokes and hostile treatment by managers and coworkers and that complaints were ignored. The EEOC also had found that the company retaliated against the employee who brought the initial complaint by firing him after he reported the unlawful treatment. In addition to monetary relief, the company has agreed to provide anti-discrimination training to all of its employees and additional training on harassment and

retaliation to all supervisors, managers and owners. It also will redistribute its anti-harassment policies and procedures and monitor its supervisors' compliance with equal employment opportunity laws.

- In May 2011, an IT service company entered a consent decree to pay $60,000 to an African-American employee who had allegedly been subjected to race discrimination and retaliation. In its lawsuit, the EEOC had alleged that the employee's supervisors subjected him to racial epithets and asked if he was a "black man or a n----r." The Commission further alleged that, following his complaints of racial discrimination, the company demoted and later discharged the employee. The consent decree enjoins the company from engaging in any racial discrimination or retaliation and requires the company to post a remedial notice for two years. In addition, the company must draft its non-discrimination, anti-harassment, and retaliation policies in simple, plain language and include a complaint procedure within these policies. The consent decree also bolsters supervisor accountability and requires training on the requirements of Title VII for all managers, supervisors, and Human Resources personnel. Finally, the company must keep records of each future complaint related to race, national origin, or retaliation and furnish written reports to the EEOC regarding any potential complaints.***EEOC v. Eclipse Advantage, Inc.*****, No. 1:10-cv-02001 (N.D. Ohio consent decree filed May 2, 2011)**.
- In April 2011, an architectural sheet metal company settled a racial harassment case for $160,000 in which the EEOC alleged that a White supervisor regularly referred to African-American employees with the epithet "n----r" and used other slurs and racial graffiti was on display in common areas and on company equipment. In addition to monetary relief, the 18-month consent decree settling the lawsuit provides for training on employee rights under Title VII, and requires the company to maintain records of racial harassment complaints, provide annual reports to the EEOC, and post a notice to employees about the lawsuit that includes the EEOC's contact information.***EEOC v. Ralph Jones Sheet Metal, Inc.*****, No. 2:09-cv-02636 (W.D. Tenn. settled Apr. 22, 2011)**.
- In April 2011, the Fourth Circuit vacated in part the district court's judgment and remanded for trial part of the EEOC's racial harassment suit against Xerxes, a fiberglass company. EEOC had alleged that the company's Hagerstown, MD plant permitted its Black employees to be subjected to a racially hostile work environment despite repeated complaints about the harassment. The alleged harassment included name-calling such as "black Polack," "Buckwheat," and "boy;" White coworkers' frequent use of the N-word; and the discovery of a note in a Black employee's locker that said: "KKK plans could result in death, serious personal injury, Nigga Bernard." The district court dismissed the EEOC's case, ruling that Xerxes had "acted quickly and reasonably effectively to end" the harassment. On appeal, the Fourth Circuit decided that a reasonable jury could find that the complaints by two claimants prior to February 2006 "were sufficient to place Xerxes on actual notice of racial slurs and pranks in the plant and that Xerxes' response was unreasonable." The court affirmed the rest of the district court's judgment.***EEOC v. Xerxes Corp.*****, No. 10-1156 (4th Cir. Apr. 26, 2011)**.
- In October 2010, a South Point, Ohio-based contractor that constructs and installs water and sewer lines entered into a 5-year consent decree to settle claims that it violated Title VII when it failed to stop a White foreman and employees from racially harassing and retaliating against a Black laborer working at defendant's sewer installation site in White Sulphur Springs, West Virginia. The alleged harassment included directing threatening language and conduct at the Black laborer, such as saying that President Obama would be assassinated and showing him a swastika a White coworker had spray-painted on company equipment. The contractor fired the Black laborer allegedly because he refused to drop his complaint after the superintendent told

him that he could not guarantee the laborer's safety and that he could not return to work while he continued to press his complaint. The consent decree awards the laborer $87,205 in monetary relief, $47,205 as backpay and $40,000 as punitive damages (paid in four quarterly $10,000 installments), all personally guaranteed by the owner, as well as a written offer of reinstatement. The decree also permanently enjoins race discrimination, racial harassment, and retaliation, and requires the contractor to implement antidiscrimination policies, complaint procedures with multiple avenues for complaining about discrimination, harassment, and retaliation, guidelines for prompt and thorough investigation of each such complaint or report (whether verbal or written), procedures for compiling and maintaining an investigative file, and EEO training for all managers, supervisors, and other employees. ***EEOC v. Mike Enyart & Sons*, No. 5:10-cv-00921 (S.D.W.Va. settled Oct. 6, 2010)**.

- In September 2010, EEOC sued the largest private university in the United States and one of New York City's ten biggest employers for allegedly violating federal law by creating a hostile work environment for an African-born employee that included degrading verbal harassment based on national origin and race. According to the EEOC's suit, the supervisor of the mailroom in NYU's Elmer Holmes Bobst Library regularly subjected his assistant, who is a native of Ghana, to slurs such as "monkey" and "gorilla," and made comments such as "go back to your cage," "go back to the jungle," and "do you want a banana?" The supervisor also frequently mocked the assistant's accented English, deriding it as "gibberish," and expressed hostility toward immigrants generally and Africans specifically. Although the assistant complained repeatedly to NYU management and human resources personnel, NYU took months to investigate and then took virtually no action to curb the supervisor's conduct. Even after the assistant alerted NYU that the supervisor had retaliated against him for complaining, such as by fabricating grounds for disciplining him, the university did not stop the harassment. ***EEOC v. New York Univ.*, No. 10-CV-7399 (S.D.N.Y. filed Sept. 27, 2010)**.
- In September 2010, the largest uniform manufacturer in North America and provider of specialized services agreed to pay $152,500 to settle a racial harassment claim. A class of African-American employees was subjected to racial harassment by co-workers when workers in a specific division were referred to as the "ghetto division," and were called derivations of "chocolate" or "chocolate delicious," conduct that went uncorrected. In addition to monetary relief, a consent decree enjoins the company from engaging in either sexual or racial harassment or retaliation. Furthermore, the company must conduct training on federal anti-discrimination laws, report on company responses to complaints, and post a remedial notice.***EEOC v. Cintas Corp.*, No. 1:09-cv-04449 (E.D. Pa. settled Sept. 27, 2010)**.
- In September 2010, EEOC filed a racial harassment lawsuit against a cell phone installation and testing company, asserting that the company violated federal anti-discrimination laws when it subjected an African-American employee to severe and repeated harassment. According to the complaint, a foreman regularly subjected the employee to racially driven comments, gestures, and threats, including calling him "boy," telling him that that "whites run things," and threatening to physically harm the employee. Furthermore, the foreman, who wore a swastika on his arm, stated that he had "cut an African from the belly to the neck" and that he "likes killing blacks and Mexicans." The foreman also said about Black people, "just hang them and burn a cross on the homes." The harassment continued even after the employee reported the conduct. Because the employee feared for his safety, he resigned. ***EEOC v. Towersite Services, LLC*, No. 1:10-cv-02997 (N.D. Ga. Sept. 20, 2010)**.
- In August 2010, an aircraft services company settled for $600,000 the EEOC's suit claiming the company permitted the unlawful harassment of Black, Filipino, and Guatemalan employees at a

Burbank, California airport. Under a two-year consent decree, Mercury Air Centers Inc. agreed to pay the settlement amount to at least seven employees who were allegedly subjected to "a barrage of harassing comments" by a Salvadoran co-worker at Bob Hope Airport. Rather than respond to the employees' complaints about the alleged harasser, the company promoted the alleged harasser to supervisor, the Commission alleged. ***EEOC v. Mercury Air Centers Inc.*, No. 08-6332 (C.D. Cal. consent decree filed Aug. 9, 2010)**.

- In April 2010, a Houston-area construction company paid $122,500 and will provide additional remedial relief to resolve a federal lawsuit alleging race, national origin and religious discrimination. The EEOC's lawsuit alleged that the company discriminated against Mohammad Kaleemuddin because he is of the Islamic faith and of East Indian descent, and against 13 other employees because they are Black or Hispanic when a supervisor referred to Kaleemuddin as "terrorist," "Taliban," "Osama" and "Al-Qaeda," to the Black employees as "n----s" and to Hispanics as "f-----g Mexicans." In addition to monetary relief, the consent decree required the owner to provide a signed letter of apology to Kaleemuddin and that the alleged harassing manager alleged be prohibited from ever working again for the company. The company will also provide employee training designed to prevent future discrimination and harassment on the job. ***EEOC v. Pace Services, L.P.*, No. 4:08cv2886 (S.D. Tex. Apr. 2010).**
- In April 2010, the EEOC settled its lawsuit against Professional Building Systems for $118,000 and significant non-monetary relief after it had identified at least 12 Black employees who had been subjected to racial harassment there. According to the EEOC's complaint, at various times between mid-2005 and 2008, Black employees were subjected to racial harassment that involved the creation and display of nooses; references to Black employees as "boy" and by the "N-word"; and racially offensive pictures such as a picture that depicted the Ku Klux Klan looking down a well at a Black man. In its complaint, the EEOC alleged that the managers of the company not only knew about the harassment and took no action to stop or prevent it, but also that a manager was one of the perpetrators of the harassment. ***EEOC v. Professional Building Systems of North Carolina, LLC*, Civil Action No. 1:09-cv-00617) (M.D.N.C. April 2010).**
- In February 2010, Big Lots paid $400,000 to settle a race harassment and discrimination lawsuit in which the EEOC alleged that the company took no corrective action to stop an immediate supervisor and co-workers, all Hispanic, from subjecting a Black maintenance mechanic and other Black employees to racially derogatory jokes, comments, slurs and epithets, including the use of the words "n----r" and "monkey," at its California distribution center. ***EEOC v. Big Lots, Inc.*, CV-08-06355-GW(CTx) (C.D. Cal. Feb. 2010).**
- In January 2010, the Sixth Circuit affirmed in part and reversed in part a district court's decision granting summary judgment to defendant Whirlpool Corporation in a racial hostile work environment case in which the EEOC participated as amicus curiae. The alleged racial harassment largely involved a serial harasser who continually used racial slurs, including various permutations on "nigger," made references to the Ku Klux Klan openly and on a daily basis, and left a threatening message on a coworker's husband's answering machine. Other racially hostile incidents included White coworkers displaying the Confederate flag on their clothing and tow motors, threatening racial violence, making repeated references to the KKK and the n-word, telling of racist jokes, remarking that they wished they had a "James Earl Ray Day" as a holiday, and "laughing and talking about the Black guy that got drugged [sic] behind a truck in Texas[,] … saying he probably deserved it." Several of the Black plaintiffs also testified about the presence of racial graffiti in the plant bearing similar messages, including "KKK everywhere," "go home sand niggers," and "Jesus suffered, so the niggers must suffer too, or … Blacks must suffer, too." ***Armstrong v. Whirlpool Corp.*, No. 08-6376 (6th Cir. Jan. 26, 2010).**

- In January 2010, a Georgia car dealership agreed to pay $140,000 to settle a race discrimination suit. In this case, the EEOC alleged that a White consultant visited the car dealership three to four times a week and never missed an opportunity to make racially derogatory comments towards the Black sales manager and almost always in the presence of other people. After the Black sales manager complained about the derogatory comments, two White managers asked the consultant to stop his discriminatory behavior. The consultant ignored their requests to cease and continued to make the derogatory comments at every opportunity. The dealership denied any liability or wrongdoing but will provide equal employment opportunity training, make reports, and post anti-discrimination notices. ***EEOC v. S&H Thomson, Inc., dba Stokes-Hodges Chevrolet Cadillac Buick Pontiac GMC*, (S.D. Ga. Consent decree filed Jan. 14, 2010).**
- In September 2009, a Phoenix credit card processing company agreed to pay $415,000 and furnish significant remedial relief to settle a race harassment lawsuit, in which the EEOC charged that the company subjected a group of African American workers to racial slurs and epithets. According to one discrimination victim: "My supervisors often referred to my fellow African-American employees and me as 'n-----rs' and 'porch monkeys' and forced us to play so-called 'Civil War games' where employees were divided into North and South. They also referred to Black children or mixed-race children as 'porch monkeys' or 'Oreo babies.' On several occasions, I was told to turn off my 'jigaboo music." ***EEOC v. NPMG, Acquisition Sub, LLC.*, No. CV 08-01790-PHX-SRB (D. Ariz. Sep. 16, 2009).**
- In August 2009, a Mississippi-based drilling company agreed to pay $50,000 to settle a Title VII lawsuit, alleging that four employees, three White and one Black, experienced racial harassment and retaliation while assigned to a remote drilling rig in Texas. The harassment included being subjected to racial taunts and mistreatment from Hispanic employees and supervisors and having their safety threatened because the supervisors conducted safety meetings in Spanish only and refused to interpret for them in English. Told that they needed to learn Spanish because they were in South Texas, the employees said that instead of addressing their complaints of discrimination, they were fired. The company agreed to establish an effective anti-discrimination policy and to provide anti-discrimination training to its employees. ***EEOC v. E&D Services, Inc.*, No. SA-08-CA-0714-NSN (W.D. Tex. Aug. 2009).**
- In May 2009, a masonry company agreed to pay $500,000 to settle a Title VII lawsuit alleging race and national origin harassment of Hispanic employees. The suit charged that the foremen and former superintendent referred to the company's Latino employees with derogatory terms such as "f---ing Mexicans," "pork chop," "Julio," "spics," "chico" and "wetback." In addition, former employees alleged that Hispanic workers were routinely exposed to racist graffiti, which the company never addressed. The three-year decree enjoins the company from future discrimination and retaliation on the basis of race or national origin and mandates anti-discrimination and investigation training for all of its employees and supervisors. ***EEOC v. Ceisel Masonry*, No. 06 C 2075 (N.D. Ill. May 22, 2009); *Ramirez v. Ceisel Masonry*, No. 06 C 2084 (N.D. Ill. May 2009).**
- In April 2009, high-end retailer Nordstrom settled an EEOC lawsuit alleging that it permitted the harassment despite complaints by Hispanic and Black employees about a department manager who said she "hated Hispanics" and that they were "lazy" and "ignorant" and that she didn't like Blacks and told one employee, "You're Black, you stink." Under the terms of the settlement, Nordstrom will pay $292,000, distribute copies of its anti-discrimination policy to its employees, and provide anti-harassment training. ***EEOC v. Nordstrom, Inc.*, No. 07-80894-CIV-RYSKAMP/VITUNAC (S.D. Fla. April 2009).**

- In July 2008, the largest independent tire companies in the nation agreed to pay $185,000 and furnish other corrective measures to settle a racial harassment lawsuit. In the lawsuit, EEOC alleged that the company subjected a Native American employee to continuous race-based harassment, which included co-workers calling him derogatory names and making insulting jokes about Native Americans over a period of years and then fired him when he continued to complain about the mistreatment. ***EEOC v. Les Schwab Tire Centers of Montana, Inc.*, No. 06-149-M-DWM (D. Mont. July 1, 2008).**
- In June 2008, a San Jose-based manufacturer of semiconductor production equipment agreed to pay $168,000 to settle EEOC claims that it failed to stop the racial harassment of an African American assembly technician who was forced to listen to a Vietnamese coworker play and rap aloud to rap music with racially offensive lyrics and then fired the Black employee after he repeatedly complained about his work conditions. The manufacturer also agreed to amend its harassment policy to refer specifically to harassment through the playing of music, and to include offensive musical lyrics in its examples of racial harassment. ***EEOC v. Novellus Systems, Inc.*, C-07-4787 RS (N.D. Cal. settled June 24, 2008)**.
- In June 2008, a landmark New York City restaurant in Central Park settled an EEOC Title VII lawsuit filed on behalf of female, Hispanic, and Black employees for $2.2 million. EEOC had alleged that for the past eight years the restaurant engaged in racial and sexual harassment. The alleged harassment included a manager's regular use of the "n-word" to refer to the Black employees and "sp*c" or "ignorant immigrants" to refer to the Hispanic employees. Additionally, the manager asked a Black hostess to "touch and suck his penis" and inappropriately grabbed her buttocks and breasts. the restaurant. Pursuant to the settlement agreement, the restaurant will establish a telephone hotline which employees may use to raise any discrimination complaints, distribute a revised policy against discrimination and retaliation, and provide training to all employees against discrimination and retaliation. ***EEOC v. Tavern on the Green*, Civil Action No. 07- CV-8256 (S.D.N.Y. settled June 2, 2008)**.
- In May 2008, the Sixth Circuit ruled that two Black male dockworkers had been subjected to a racially hostile work environment in violation of Title VII. The harassment in this case, in which the EEOC filed an amicus brief in support of the victims, centered on the frequent use of the term "boy" to refer to the Black male employees. The term was spray-painted on walls and doors, written in Black marker or spray painted in the locker rooms, equipment, and on a calendar in the break room over Martin Luther King's birthday, etched into bathroom walls in the terminal, and written in dust on dock surfaces, even after the employer held a sensitivity session to explain the term's racial and derogatory implications. ***Bailey v. USF Holland, Inc.*, 526 F.3d 880 (6th Cir. 2008).**
- In April 2008, the Tenth Circuit Court of Appeals vacated the district court's decision granting summary judgment to the defendant on the plaintiff's Title VII claim alleging that he was subjected to a racially hostile work environment. The racial hostility manifested as racist graffiti, racial epithets, and the hanging of a noose at a Salt Lake City rail yard. Agreeing with the position taken by the EEOC as amicus curiae, the court of appeals held that nearly all of the racially hostile acts alleged by the plaintiff could be considered as a single hostile work environment under National Railroad Passenger Corp. v. Morgan, 536 U.S. 101 (2002), and that the plaintiff could obtain relief for the entire period of the hostile work environment at issue notwithstanding the fact that he failed to file suit after receiving a notice of right to sue on an earlier Title VII charge challenging the racial harassment. ***Tademy v. Union Pacific Corp.*, 520 F.3d 1149 (10th Cir. Apr. 1, 2008)**.

- In March 2008, the Commission affirmed the AJ's finding of race (Native American) and national origin (Cherokee Nation) discrimination, where complainant had his life threatened by a client and the agency never took necessary actions to stop the harassment. The AJ found that a customer continually harassed complainant by, among other actions, referring to complainant as a "worthless Indian, dumb Indian, and stupid." The Commission affirmed the award of $50,000 in non-pecuniary damages due to complainant's emotional suffering, restoration of leave, payment of costs, and mileage. The Commission also ordered training of responsible officials, consideration of discipline, and the posting of a notice but rejected the AJ's award of $6,903.87 in closing costs for complainant's sale of his house as being too speculative to connect to the discriminatory conduct.***Hern v. Department of Agriculture*, EEOC Appeal No. 0720060012 (March 10, 2008)**.
- In January 2008, a Lockheed Martin facility in Hawaii settled a Title VII lawsuit for $2.5 million, the largest amount ever obtained by the EEOC for a single person in a race discrimination case. The EEOC asserted that the military contractor engaged in racial harassment and retaliation after it allegedly permitted a Latino supervisor and White co-workers to subject an African American electrician to racial jokes, slurs and threats daily for a year. Additionally, the employees allegedly told the Black electrician it would have been better if the South had won the Civil War and talked regularly about lynching and slavery. After the electrician complained about the harassment, he was terminated. In addition to the monetary settlement, the company agreed to terminate the harassers and make significant policy changes to address any future discrimination. ***EEOC v. Lockheed Martin*, Civil No. 05-00479 SPK (D. Haw. settled Jan. 2, 2008)**.
- In October 2007, EEOC obtained $290,000 from an Oklahoma-based oil drilling contractor for seven African American men who alleged that, while on an oil rig, they were subjected to a hostile work environment, which included the display of hangman nooses, derogatory racial language, and race-based name calling. ***EEOC v. Helmerich & Payne Int'l Drilling Co.*, No. 3:05-cv-691 (D. Miss. 2007).**
- In October 2007, the Commission decided that a federal agency had improperly dismissed a Black employee's racial harassment complaint for failure to state a claim. The employee had alleged she was subjected to a hostile work environment because the agency had rehired a former employee who had been charged with discrimination after he made a noose and hung it up in the proximity of an African American employee. The Commission decided that the employee's allegations, if true, were sufficiently severe to state a hostile work environment claim in violation of Title VII since an employer is responsible for preventing discriminatory work environments when it is aware of such danger. The case was reinstated and remanded to the agency for an investigation. ***Juergensen v. Dep't of Commerce*, EEOC Appeal No. 0120073331 (Oct. 5, 2007).**
- In April 2007, the Commission decided that a Caucasian complainant, was subjected to racial harassment over a period of two years by both managers and co-workers used various racially derogatory terms when referring to complainant. Evidence showed that management generally condoned racially related comments made by African-American supervisors and co-workers who frequently voiced a "Black versus White" mentality at the work place. The Commission ordered the agency to pay complainant $10,000.00 in compensatory damages and to provide training to all management and staff at the facility. **See *Brown v. United States Postal Service*, EEOC Appeal No. 0720060042 (April 11, 2007).**
- In April 2007, EEOC reached a $900,000 settlement in a lawsuit alleging that a geriatric center subjected 29 Black, Haitian and Jamaican employees to harassing comments because of race and national origin. The employees were also prohibited from speaking Creole, and were

retaliated against by being subjected to discipline when they complained about their treatment. ***EEOC v. Flushing Manor Geriatric Center, Inc. d/b/a William O. Benenson Rehabilitation Pavilion*, No. 05-4061 (E.D.N.Y. Apr. 23, 2007).**

- In January 2007, EEOC settled a racial harassment lawsuit against AK Steel Corporation, a Fortune 500 company, for $600,000. The evidence in that case was both severe and pervasive because the workplace featured Nazi symbols, racially graphic and threatening graffiti with messages to kill Black people, displays of nooses and swastikas in work areas open to Black employees, racial slurs and epithets, an open display of KKK videos in the employee lounge areas and circulation of political literature by David Duke, a known KKK leader. ***EEOC v. AK Steel Corp.,* (Jan. 31, 2007).**
- In November 2006, the EEOC resolved a Title VII lawsuit alleging that defendant, a nationwide meat processing company, discriminated against Black maintenance department employees at its chicken processing plant in Ashland, Alabama, by subjecting them to a racially hostile work environment, which included a "Whites Only" sign on a bathroom in the maintenance department and a padlock on the bathroom door to which only White employees were given keys. The complaint also alleged that the two Charging Parties were retaliated against when they were suspended for minor issues within a few months of complaining about racial conditions at the plant. Thirteen Black employees intervened in the Commission action alleging violations of Title VII, 42 U.S.C. § 1981, and various state law provisions. Pursuant to a 3-year consent decree, 13 complainants would receive $871,000 and attorney's fees and costs. ***EEOC v. Tyson Foods, Inc.,* cv-05-BE-1704-E (N.D. Ala. Nov. 7, 2006).**
- In July 2006, Home Depot paid $125,000 to settle a race discrimination and retaliation lawsuit. The suit alleged that a Black former night crew lumberman/forklift operator was subjected to a racially hostile work environment because management condoned racial remarks by his supervisors who called him "Black dog," "Black boy," a "worthless [racial epithet]" and told him that the Supreme Court had found Black people to be "inferior." ***EEOC v. Home Depot USA, Inc.*, No. 05-11921 (D. Mass. July 13, 2006).**
- In March 2006, a commercial coating company agreed to pay $1 million to settle an EEOC case that alleged that a Black employee was subjected to racially hostile environment that included frequent verbal and physical abuse that culminated in him being choked by a noose in the company bathroom until he lost consciousness. ***EEOC v. Commercial Coating Serv., Inc.,* No. H-03-3984 (S.D. Tex. Mar. 2006).**
- In February 2006, the Commission affirmed an AJ's finding that complainant had been subjected to hostile work environment discrimination based on race (African-American) when a noose was placed in his work area. Although based on a single incident, the noose was a sufficiently severe racial symbol with violent implications that equates to a death threat. As such, the incident altered the condition of complainant's employment. Complainant was awarded $35,000.00 in non-pecuniary compensatory damages, restoration of annual and sick leave, and $34,505.87 in attorney's fees. The agency was ordered to provide racial harassment training to all employees at the activity. ***Tootle v. Navy*, EEOC Appeal No. 07A40127 (Feb. 10, 2006).**
- In March 2005, the Commission found that a federal employee's supervisor subjected him to hostile work environment harassment when he used a historically-offensive racist slur (n-word) in the employee's presence and at least once in reference to him; treated him less favorably than he did White employees; verbally abused him; and subjected him to hazardous working conditions because of complainant's race (African-American). EEOC also found that the supervisor violated the anti-retaliation provisions of Title VII when, standing behind the federal

employee, he informed all employees that if they wanted to file an EEO complaint, they had to discuss it with him first. EEOC ordered the agency to determine complainant's entitlement to compensatory damages; train the supervisor with regard to his obligations to eliminate discrimination in the federal workplace; and consider taking disciplinary action against the supervisor. ***Whidbee v. Department of the Navy*, EEOC Appeal No. 01A40193 (March 31, 2005).**

- In November 2004, in a case against an upstate New York a computer parts manufacturer, EEOC alleged that Native American employees were subjected to frequent name-calling, war whoops, and other derogatory statements (comments about being "on the warpath" and about scalpings, alcohol abuse, and living in tepees). The employees complained to several supervisors and the Human Resources Department, and the offending employees were occasionally warned, but the hostile environment continued. A consent decree required the company to pay $200,000 to the victims and enjoined future discrimination; to actively recruit Native Americans for available positions; to implement and publish a policy and procedure for addressing harassment and retaliation that includes an effective complaint procedure, and to report to EEOC on complaints of retaliation and harassment based on Native American heritage. ***EEOC v. Dielectric Labs, Inc.* (N.D.N.Y. Nov. 14, 2007), available at** https://www.clearinghouse.net/detail.php?id=8939.
- In November 2004, the Commission decided that, although racially charged comments were only made on one day, the nature of the comments, which included several racial slurs, was sufficiently severe to render work environment hostile. ***Nicholas v. Department of Agriculture*, EEOC Appeal No. 01A43603 (November 4, 2004).**
- In September 2004, the Commission affirmed an AJ's finding that a Caucasian registered nurse had been subjected to racial harassment and constructive discharge. The AJ found that for approximately two and one-half years Black Health Technicians refused to comply with her orders while following the orders of African American nurses; that one Health Technician told complainant that she would not take orders from a White nurse; and that Technicians screamed, banged on doors, blocked complainant's exit when complainant asked for assistance. The AJ found that the harassment ultimately led to proposed disciplinary action and complainant's constructive discharge. The agency was ordered to reinstate complainant to a Registered Nurse position in a different work area, with back pay and benefits, pay complainant $10,000 in compensatory damages, and provide training to her former unit. ***Menard v. Department of Veterans Affairs,* EEOC Appeal No. 07A40004 (September 29, 2004), request for reconsideration denied, EEOC Request No. 05A50175 (January 18, 2005);** *http://www.eeoc.gov/decisions/05a50175.txt*.

Retaliation

- In October 2019, Eagle United Truck Wash, LLC, which operates truck washing facilities at truck stop locations around the United States, paid $40,000 and furnished significant equitable relief to settle a racial harassment, discrimination and retaliation lawsuit. According to the suit, supervisors and employees subjected an African American truck washer, the only black employee at the Milton facility for most of his employment, to racial epithets and insults despite the truck washer's complaints to management and then the company fired him on the same day that he complained. The three-year consent decree enjoins the company from engaging in or condoning race-based harassment and retaliation; requires the provision of training on federal anti-discrimination laws with an emphasis on preventing race-based harassment; and mandates reporting to the EEOC on how it handles internal complaints of race-based discrimination and

the posting of a notice regarding the settlement. *EEOC v. Eagle United Truck Wash, LLC*, Civil Action No. 4:18-cv-1856 (M.D. Pa. Oct. 29, 2019).

- In September 2019, the owner of a wedding event space in Kansas City agreed to pay $15,000 to a former part-time employee whom EEOC alleged was the subject of a “campaign of intimidation and threats” for supporting a co-worker’s racial discrimination claim. The EEOC lawsuit accused the owner of 28 Event Space of retaliating against an African American employee who was a witness in an earlier race discrimination claim against Profile Cabinet and Design. The wedding event owner was a part owner of the custom cabinet maker. EEOC alleged that initially the owner offered the Black employee money and the use of a limousine if the employee agreed not to testify in the discrimination case. When he refused, EEOC claimed the owner threatened the employee’s job and reduced his work hours. As part of the three-year consent decree, the company also is required to create clear, understandable anti-discrimination policies, require training for the owner and employees and provide regular reports to the EEOC for the next three years. *EEOC v. 28 Event Space, LLC*, Civil Action No. 4:18-cv-889 (W.D. Mo. Nov. 9, 2018).
- In June 2016, DHD Ventures Management Company Inc. will pay a total of $40,000 to settle allegations of racial harassment and retaliation. The EEOC charged that the company, a New York-based real estate management company, allowed Charles Lesine and Marlin Ware to be harassed from late 2007 to November 2011 at Grandeagle Apartments, a residential complex in Greenville, South Carolina, that DHD managed. According to the lawsuit, Lesine and Ware allegedly were subjected to unwelcome derogatory racial comments and slurs made by a White coworker, including the repeated use of the "n" word. The two employees complained to management but the harassment allegedly continued. ***EEOC v. DHD Ventures Mgmt. Co***., Case No. 6:15-cv-00102-TMC-KFM (D.S.C. 2016).
- In June 2016, a Minnesota-based Regis Corporation, which does business as Smart Style Family Hair Salon, paid $90,000 to resolve allegations of retaliation discrimination. According to the EEOC complaint, two employees at one of the company's North Carolina salons were allegedly fired for opposing what they reasonably believed was an unlawful employment practice. They alleged a soon-to-be salon manager told them that she did not want African-Americans working in the salon. The two employees then told an African-American candidate for an open position at the salon they believed the manager would not hire her due to her race. The company then purportedly fired the two employees, stating they had lied. The two year consent decree requires Regis to report the action it takes in response to any employee's complaint about discrimination and to post a notice to employees concerning their rights under federal, anti-discrimination laws. ***EEOC v. Regis Corp***., Civil Action No. 7:15-CV-00151-F (E.D. N.C. June 2016).
- In May 2016, American Casing & Equipment Inc., a Williston-based oil field service company, paid $250,000 to a Filipino worker it fired after he complained of harassment to settle a discrimination and retaliation lawsuit filed by the EEOC. The lawsuit alleged that since November 2012, a White manager harassed the worker of Filipino heritage by directing racial slurs ("non-white m----f----r," "non-white guy," "spic," "n----r," "monkey" and "ape") at him, jabbing him with a finger in the stomach and chest, and once urinating on his leg while he worked under a truck. No supervisor made any attempt to stop the abuse. The employee ultimately was fired after he complained to the company's safety manager about the harassment. ***EEOC v. for American Casing & Equipment Inc***., Civil Action No. 4:15-cv-00066 (DLH-CSM) (D.N.D. May 24, 2016).
- In September 2014, Izza Bending Tube & Wire agreed to pay $45,000 to settle an EEOC suit alleging that the company retaliated against employee Myrna Peltonen when it demoted her

and reduced her salary after she refused to discriminate against an African-American employee. The Commission lawsuit charged that Izza's manager instructed Peltonen not to hire the Black employee, who was working as a temporary employee, to a permanent position, and told her to get rid of him because of his race. The EEOC's lawsuit further alleged that after Peltonen filed a discrimination charge with the EEOC, she was laid off and then terminated in retaliation." The consent decree requires other equitable relief, including reporting and training. ***EEOC v. Izza Bending Tube & Wire, Inc.*, No. 0:13-cv-02570 (D. Minn. Sep. 19, 2014).**

- In March 2014, a federal district court upheld a jury verdict in favor of the EEOC and ruled that Sparx Restaurant of Menomonie, Wis., must provide back pay with interest of more than $41,000 in addition to the jury's award of damages of $15,000 to a former employee who was fired in retaliation for complaining about a racist display in the workplace. The display included a dollar bill with a noose around George Washington's neck and drawings of a man on horseback and a hooded figure with "KKK" written on his hood. After EEOC filed its case, Sparx Restaurant closed and was replaced by a Denny's franchise. The district court decided that the companies were a single employer. The court also entered a three-year injunction, enjoining the defendants from: discharging employees in retaliation for complaints about racially offensive postings in their workplace; failing to adopt policies that explicitly prohibit actions made unlawful under Title VII; failing to adopt an investigative process with regard to discrimination claims; and failing to provide annual training regarding Title VII to Chris Brekken, who owns all interests in the three corporate defendants, and other managers. On appeal, the Seventh Circuit affirmed the district court's judgment and held for the first time held that a tax-offset award was appropriate in a Title VII claim when the lump-sum award place the employee in a higher tax bracket. The court also held that the new entity operating as a Denny's franchise was liable as a successor. EEOC v. Northern Star Hospitality, Inc., No. 3:12-cv-00214 (E.D. Wis. Judgment filed Feb. 25, 2014), aff'dl, ***EEOC v. Northern Star Hospitality, Inc.*, 777 F.3d 898 (7th Circ. 2015).**
- In December 2012, an office and technology supply store paid $85,000 and target recruitment of African-Americans and Hispanics to settle a retaliation lawsuit filed by the EEOC. The EEOC's lawsuit charged that OfficeMax violated federal law when its store manager retaliated against a sales associate after the associate complained that he had been terminated because he is Hispanic. The store manager was required to immediately reinstate the sales associate, but then engaged in a series of retaliatory actions designed to generate reasons to terminate him again and/or force the sales associate to resign, the agency alleged. In addition to the monetary settlement, the four year consent decree contained injunctive relief: OfficeMax agreed to target additional recruitment efforts in the Sarasota/Bradenton area to reach more African American and Hispanic applicants, provide training for its management and human resource personnel in three locations in the Bradenton/Sarasota area on racial harassment and retaliation, and will report future internal discrimination complaints to the EEOC. ***EEOC v. OfficeMax North America*, Case No. 8:12-cv-00643-EAK-MAP (M.D. Fla. Dec. x, 2012).**
- In April 2012, a real estate company in Little Rock agreed to pay $600,000 to former employees and a class of applicants to settle a race discrimination and retaliation lawsuit filed by the EEOC. The EEOC's suit alleged that the company excluded Black applicants for jobs at the company's Little Rock location based upon their race. The EEOC also alleged that the company retaliated against other employees and former employees for opposing or testifying about the race discrimination, by demoting and forcing one out of her job and by suing others in state court. In addition to the monetary relief, the three-year consent decree requires the company to provide mandatory annual three-hour training on race discrimination and retaliation under Title VII; have its president or another officer appear at the training to address the company's non-

discrimination policy and the consequences for discriminating in the workplace; maintain records of race discrimination and retaliation complaints; and provide annual reports to the EEOC. ***EEOC v. Bankers Asset Management, Inc.*, No. 4:10-CV-002070-SWW (E.D. Ark. Apr. 18, 2012).**

- In March 2012, a northern Nevada company agreed to pay $50,000 to a Black driver to settle an EEOC lawsuit alleging racial harassment and retaliation. In its complaint, the EEOC said the driver was subjected to racial slurs by a supervisor and taunts by White employees. In one instance, the EEOC says a co-worker flaunted a swastika tattoo and talked about keeping the White race "pure." The lawsuit alleged that the driver was fired after complaining twice in one month about the treatment. ***EEOC v. Sierra Restroom Solutions, LLC*, Civ. No. 3:09-CV-00537 (D. Nev. Mar. 20, 2012).**
- In March 2012, a Warren, Mich.-based painting company which does business in several states, will pay $65,000 to settle a retaliation lawsuit filed by the EEOC. The EEOC had charged that the company unlawfully retaliated against an employee for objecting to race discrimination. In its lawsuit, the EEOC said that Atsalis retaliated against a journeyman painter, who complained about the use of the "N-word" by his foreman, by not bringing him back to work for the 2008 work season. In addition to the monetary award, the decree requires the company to provide ongoing anti-discrimination training to all of the company's officers, managers, supervisors, and human resources personnel; create a new anti-discrimination policy; institute new procedures for handling discrimination complaints; and file reports with the EEOC regarding compliance with the decree's requirements. ***EEOC v. Atsalis Bros. Painting Co.*, Civil Action No. 11-cv-11296 (E.D. Mich. Mar. 9, 2012).**
- In November 2011, a furniture company operating in several locations in Puerto Rico, agreed to pay $40,000 and furnish other relief to settle a charge of retaliation at a worksite in San Juan. According to the EEOC's lawsuit, a Puerto Rican store manager allegedly harassed a dark-complexioned Puerto Rican sales associate because of his skin color (e.g., taunting him about his color and asking why he was "so Black") and then fired him for complaining. In addition to requiring a payment of damages, the consent decree settling the suit prohibits the furniture company from further retaliating against employees who complain about discrimination and requires the company to amend its current anti-discrimination policy to conform to EEOC policy and to provide four hours of anti-discrimination training to all Koper employees, including management personnel, on a biannual basis. ***EEOC v. Koper Furniture, Inc.*, Case No. 09-1563 (JAG) (D.P.R. *consent decree approved* Nov. 7, 2011)**
- In April 2011, a long-term care facility located approximately four miles from Little Rock, Ark agreed to pay $22,000 in back pay and compensatory damages to settle an EEOC retaliation case. EEOC charged that the facility violated Title VII when it fired a housekeeping supervisor allegedly because she had complained that she found certain comments by her supervisor racist and that she believed a watermelon-eating contest in the workplace had racist overtones. The EEOC further alleged that, shortly after she complained, she was discharged for supposedly making "false, defamatory, and malicious statements" about a supervisor. Under the two-year consent decree, the company is enjoined from engaging in retaliation, must instate a new policy on retaliation, and provide two hours of Title VII (including retaliation) training to all personnel in Little Rock. In addition, the company must submit two written reports to the EEOC regarding any future retaliation complaints and all pertinent information related to potential complaints. The consent decree also requires the company to post a remedial notice for one year and to notify any potential successors of the consent decree. ***EEOC v. StoneRidge Health and Rehab Center, LLC*, Civil Action No. 4:10-cv-1414 JMM (E.D. Ark. consent decree filed April 25, 2011).**

- In February 2011, the EEOC settled a suit against a Portland-based seafood processor and distributor for $85,000 on behalf of a warehouse worker. The lawsuit asserts that, after the warehouse worker spoke to management about race discrimination because a non-Hispanic co-worker received a larger raise, he was told that if he was going to accuse the company of discrimination, they "should part ways." According to the terms of the settlement, the seafood distributor agreed to pay the employee $85,000 and redraft its policies on discrimination and retaliation as well as provide employee training on workplace discrimination. ***EEOC v. Pacific Seafood Co., Inc.*, No. cv-08-1143-ST (D. Or. settled Feb. 3, 2011)**.
- In November 2010, a nationwide provider of engineering and janitorial services to commercial clients entered into a 4-year consent decree paying $90,000 in backpay and compensatory damages to settle the EEOC's claim that it discharged a building services engineer at a mall in Bethesda, Maryland in retaliation for complaining of race and sex discrimination. EEOC alleged that the engineer reported to his supervisor that the mall's operations manager was engaging in race discrimination and sexual harassment; the supervisor told the engineer to ignore the operations manager's conduct, and offered to relocate the engineer. EEOC also alleged that when the engineer declined to relocate, the provider discharged him. The decree also requires the provider to draft and distribute written polices against employment discrimination in English and Spanish, which provide for effective complaint and investigation procedures, including a toll-free number and e-mail address for complaints, to all employees and independent contractors who work for defendant in Washington, D.C., Maryland, and Virginia. The company will name an EEO officer to receive complaints of discrimination and retaliation, and starting in January 2011, and every 6 months thereafter, will report to EEOC and to defendant's vice president of national operations on complaints of discrimination and retaliation received from applicants and employees in Washington, DC, Maryland, and Virginia and the outcome. Lastly, the company will provide discrimination and retaliation training of at least 2 hours to supervisors and managers in Washington, D.C., Maryland, and Virginia.***EEOC v. Crown Energy Services, Inc.*, No. PJM 8:09-CV-2572 (D. Md. Nov. 30, 2010)**.
- In September 2010, the EEOC sued an oil well servicing contractor for terminating an African-American employee allegedly because of his race and for complaining about racial discrimination. After being subjected to racial slurs and witnessing a supervisor display a noose with a black stuffed animal hanging from it, the employee complained. Subsequent to the complaints, the employee was fired. ***EEOC v. Basic Energy Services L P*, No. 5:10-cv-01497 (W.D. La. filed Sept. 28, 2010)**.
- In September 2010, the EEOC filed suit against a Roanoke-based hair salon chain for allegedly firing an African American hair stylist for complaining about an assistant manager's racist comments. According to the EEOC's complaint, the assistant manager subjected the Black stylist to racist slurs in two separate incidents occurring in March and April 2008. In each incident, the assistant manager made references to African-Americans using the N-word. On April 24, 2008, the Black stylist met with her operations manager and salon manager and complained to both supervisors about the assistant manager's offensive remarks. The EEOC alleges that several weeks later, on May 17, 2008 the salon manager discharged the stylist in retaliation for her race-related complaint. ***EEOC v. Tomlin Hair Care, Inc., dba Cost Cutters Family Hair Care*, Civil Action No. 4:10-cv-43 (W.D. Va. filed Sept. 23, 2010)**.
- In August 2010, a North Carolina poultry processor entered a two-year consent decree agreeing to pay $40,000 to resolve an EEOC case alleging that the company engaged in unlawful retaliation. EEOC had asserted that the company gave an African American employee an unjustifiably negative performance evaluation shortly after she filed two internal complaints

with management about her White supervisor's use of racially offensive language about her and in her presence and when it discharged her two weeks after she filed an EEOC charge because of her dissatisfaction with the company's response to her discrimination complaints. In accordance with the consent decree, the company must adopt, implement, and post a formal, written anti-discrimination policy, provide annual Title VII training for all managers and supervisors and report to the EEOC semi-annually on any instances where employees opposed unlawful employer practices. ***EEOC v. Mountaire Farms of North Carolina Corp.*, Civil Action No. 7:09-CV-00147 (E.D.N.C. August 6, 2010)**

- In October 2007, the Commission obtained $2 million for approximately 50 claimants in this Title VII lawsuit alleging that defendant subjected employees in its three Illinois restaurant/gift stores to sex and race discrimination and retaliation, causing the constructive discharge of some employees. Female employees were subjected to offensive sexual comments and touching by managers and coworkers; Black employees to racially derogatory language, and directives to wait on customers that White employees refused to serve and to work in the smoking section; and a White employee to racially offensive language because of her association with a Black employee. The 2-year consent decree prohibits the company from engaging in sex and race discrimination and retaliation at the three stores. ***EEOC v. David Maus Toyota*, Civil Action No. 6:05cv-1452-ORL-28-KRS (M.D. Fla. Oct. 30, 2007)**.
- In July 2006, EEOC reached a $100,000 settlement in its Title VII lawsuit against a Springfield, Missouri grocery chain alleging that a Black assistant manager was subjected to racially derogatory comments and epithets and was permanently suspended in retaliation for complaining about his store manager's racial harassment of him and the manager's sexual harassment of another worker. ***EEOC v. Roswil, Inc. d/b/a Price Cutters Supermarket*, No. 06-3287-CV-S-WAK (W.D. Mo. July 27, 2006).**
- In November 2005, the EEOC obtained a $317,000 settlement in a Title VII case alleging that an extended stay hotel business discharged and otherwise retaliated against a district manager (DM) for six properties in Georgia, Alabama, and Virginia because she complained about race discrimination. The DM, a White female, e-mailed Defendant's Chief Operating Officer in September 2001 expressing her concerns about the exclusion of African Americans and other racial minorities from management positions. Despite being considered a stellar performer, following her e-mail, the DM was reprimanded, threatened with a PIP, accused of being disloyal to the company, and terminated. The 24-month consent decree applies to all of Defendant's facilities in Georgia and include requirements that Defendant create and institute a non-retaliation policy, advise all employees that it will not retaliate against them for complaining about discrimination, and instruct all management and supervisory personnel about the terms of the decree and provide them with annual training on Title VII's equal employment obligations, including non-retaliation. ***EEOC v. InTown Suites Management, Inc.*, No. 1:03-CV-1494-RLV (N.D. Ga. Nov. 21, 2005).**
- In February 2005, EEOC settled a retaliation case against Burger King for $65,000, on behalf of a Caucasian manager who was terminated after refusing to comply with a Black customer's preference that a "White boy" not make her sandwich. ***EEOC v. Star City LLC d/b/a Burger King*, No. 6:03-cv-00077 (W.D. Va. consent decree filed Feb. 11, 2005)**.

Discharge

- In December 2019, DSW Shoe Warehouse Inc., a nationwide shoe retailer headquartered in Columbus, Ohio, paid $40,000 and furnished equitable relief throughout the stores in its

Midwest Great Lakes Region (including Michigan and Ohio) to resolve a race discrimination lawsuit filed by the EEOC. The EEOC alleged that DSW intentionally discriminated against a former assistant manager at the company's Warrensville Heights, Ohio retail store because she is Black when it terminated the assistant manager after she had been subjected to race-based discipline and unequal terms and conditions of employment. The 18-month consent decree enjoined DSW from future race discrimination and unlawful retaliation; required that DSW will provide training on federal laws and store policies prohibiting discrimination and retaliation and reporting regarding any internal complaints of alleged race discrimination or retaliation. *EEOC v. DSW Shoe Warehouse, Inc.*, Civil Action No. 2:18-cv-01122 (S.D. Ohio consent decree filed Dec. 4, 2019).

- In September 2019, a commercial truck washing facility paid $40,000 to settle an EEOC lawsuit accusing the owner of firing an employee because he is Black and had reported that he had been subjected to a racially hostile work environment. According to the lawsuit, the employee who was the only African American worker at the site was daily subjected to racial slurs by coworkers which management refused to address. Along with a monetary settlement, the three-year consent decree requires the company to disseminate and post a modified anti-discrimination policy; designate specific individuals to whom raced-based discrimination complaints should be directed; provide at least three hours of anti-discrimination training by a compliance specialist for all management and supervisory personnel; and submit a written report to the EEOC after one year identifying all race-based discrimination complaints. *EEOC v. Eagle United Truck Wash*, *LLC*, Civil Action No. 4:18-cv-1856 (M.D. Pa. Sep. 20, 2019).
- In January 2017, Hospman LLC paid $35,000 and furnish other relief to settle a race discrimination lawsuit filed by the EEOC. According to the EEOC's suit, Hospman fired several Black employees in August 2012 after taking over management responsibility of a Fort Myers hotel. The EEOC charged that Hospman's former chief executive officer ordered the housekeeping supervisor to terminate all of the housekeepers - all but one of whom were Black - because he did not work with "those kind of people." He also asked the housekeeping supervisor about her race and, upon learning that she was Black, fired her as well. The only black front desk attendant also was terminated, while other non-Black front desk workers were allowed to continue their employment. Under the consent decree resolving the EEOC's claims, Hospman also will revise policies regarding race discrimination complaints as set forth in its employee handbook; conduct annual training of its managers and supervisors on the requirements of Title VII; post a notice about the lawsuit for its employees; and report to the EEOC regarding complaints of race discrimination and the company's employment practices. ***EEOC v. Hospman, LLC*** , Case No. 2:15-cv-00419-JES-CM (M.D. Fla. Jan. 27, 2017).
- In September 2016, SFI of Tennessee LLC agreed to pay $210,000 to settle allegations of race discrimination. The EEOC charged SFI, a fabricator and supplier of heavy-gauge steel and value-added products, with discharging three black employees on the same day because of their race. The three employees worked in the supply chain department at SFI and allegedly had no performance issues before their discharges. According to EEOC, SFI replaced the black employees with white employees. The agency alleges these actions were motivated by race. Purported conduct of this nature violates Title VII of the 1964 Civil Rights Act. In addition to monetary relief, the company must provide race discrimination training to all employees. ***EEOC v. SFI of Tenn. LLC***, No. 2:14-cv-02740 (W.D. Tenn. Sep. 7, 2016).
- In June 2016, Bloom at Belfair, a nursing home in Bluffton, South Carolina, paid $40,000 to settle an EEOC lawsuit alleging that the company discriminated against an African-American activities director when it fired her in September 2014 because of her race. The EEOC charged that the

director's firing followed the termination of other African-American managers at the facility and was part of a company plan to eliminate African-Americans from management. In addition to the monetary relief, the EEOC consent decree requires the company to provide EEO training and to post a notice about the lawsuit in the workplace. ***EEOC v. Bloom at Belfair***, No. 9:15-cv-04047-CWH-BM (D.S.C. June 9, 2016).

- In April 2016, the Eleventh Circuit reversed the district court in an employment discrimination case alleging race and age discrimination in violation of Title VII and the ADEA, respectively. The EEOC filed an amicus brief in the case on behalf of the pro se plaintiff, a 65-year old white female front desk clerk, who repeatedly had been told she was "too old" and "the wrong color" by the hotel general manager who terminated her. The Commission argued that, contrary to the district court's requirement that the plaintiff needed to identify comparators or a replacement to establish a prima facie case, the discriminatory comments were direct evidence of animus and sufficient to establish a prima facie case of discrimination as well as raise triable issues of pretext sufficient to overcome summary judgment. The Eleventh Circuit essentially agreed and concluded that the discriminatory comments constituted circumstantial evidence of discrimination sufficient to defeat summary judgment. ***Kilgore v. Trussville Dev***., No. 15-11850 (11th Cir. Mar. 24, 2016).
- In August 2015, the EEOC won a judgment of more than $365,000 against the Bliss Cabaret strip club and its parent company this week after a Black bartender was allegedly fired based on her race. In its lawsuit, the EEOC said the Clearwater strip club and its successor corporation, Executive Gentlemen's Club, fired a bartender because its owner said he didn't want a Black bartender working at the club. The EEOC claimed that former manager who hired her, was suspended and then fired after he refused to comply with the owner's request. The awarded relief included punitive damages, compensatory damages, back pay, interest and tax-penalty offsets. ***EEOC v. AJ 3860, LLC, d/b/a The Executive Gentlemen's Club, and Southeast Showclubs, LLC***, Civ. No. 8:14-cv-1621-T-33TGW (M.D. Fla. default judgment filed Aug. 11, 2015).
- Chapman University, a private university in Orange, Calif., paid $75,000 and furnished other relief to settle an EEOC race discrimination. The EEOC had charged that Chapman's George L. Argyros School of Business & Economics (ASBE) discriminated against Stephanie Dellande, an assistant professor of marketing, because of her race. The EEOC contended that Dellande was denied both tenure and promotion to associate professor in 2006 because she is African-American, despite strong recommendations in her favor by many professional peers. The university discharged her in June 2008 upon a denial of her tenure appeal. According to the EEOC's suit, Dellande was the first Black professor to have been allowed to apply for tenure at the ASBE, and was subjected to a higher standard for obtaining tenure and promotion than her non-Black peers. ***EEOC v. Chapman Univ.*****, No. 8:10-cv-1419(JAK) (C.D. Cal. June 20, 2014).**
- In September 2012, a Rosemont, Ill.-based food product distributor paid $165,000 and furnished other relief to settle a race discrimination lawsuit filed by the EEOC. In its lawsuit, the EEOC charged that the food distributor violated federal law by firing an African-American employee who worked at its Memphis facility because of his race. Specifically, the EEOC said, the company discharged the black employee after he failed to stop a Caucasian driver who reported to work under the influence of alcohol from making deliveries on his route. US Foods did not terminate the Caucasian driver for being under the influence, or another Caucasian safety specialist who saw the driver at the first stop on his route. Instead, the company discharged the white driver later for an unrelated matter. ***EEOC v. US Foods, Inc. fka U.S. Foodservice, Inc.*****, Civil Action No. 2:11-cv-02861 (W.D. Tenn. Sep. 12, 2012).**

- In April 2012, the Fifth Circuit ruled that Kansas City Southern Railway Company (KCSR) violated Title VII when engaged in race discrimination by terminating two Black employees because of work rule violations and retaining their similarly-situated White co-drivers who were involved in the same incidents leading to Black employees' dismissals. The Court also took issue with KCSR's failure to document the reasons for the terminations and inability to identify the decisionmaker. The Court cautioned: "KCSR is no stranger to Title VII employment discrimination litigation, and it would behoove KCSR to discharge its burden with greater acuity." ***EEOC v. KCSR*, No. 09-30558 (5th Cir. 2012).**
- In July 2011, a global manufacturer and seller of chemical products in El Dorado, Ark., will pay $80,000 and furnish other relief to settle an EEOC lawsuit alleging the company engaged in race discrimination when it terminated Black employees based upon discriminatory and subjective evaluations. In addition to the monetary relief, the consent decree settling the suit enjoins the company from terminating employees in its El Dorado central location's Inorganic Bromine Unit on the basis of race. The company also must provide race and color discrimination training to all supervisory and management personnel in its IOB Unit and post a notice reinforcing the company's policies on Title VII. ***EEOC v. Great Lakes Chemical Corp.*, Civil Action No. 1:09-CV-01042 (W.D. Ark. July 12, 2011)**.
- In February 2011, the EEOC filed suit against an electric company alleging race discrimination. According to the lawsuit, the company's allegations that the Black journeyman electrician was in charge of a crew that damaged light fixtures is a pretext. EEOC contends that the company's superintendant and foreman, both White, were actually in charge of the crew that caused the damage. The agency maintains that neither they nor the non-Black employees who actually caused the damage to the light fixture were terminated. ***EEOC v. Salem Electric Co.*, Civil Action No. 1-11-cv-00119 (M.D.N.C. Feb. 14, 2011)**.
- In December 2010, a cosmetic laboratory settled an EEOC lawsuit charging discrimination based on race, color, national origin, and retaliation against a Black employee for $30,000. The laboratory hired the employee, a British subject born in Zimbabwe, for a full-time internship. Upon arrival, her employer realized she was Black and her supervisors gave her no direction and very few assignments despite her requests for work. The company's other two interns, who were White, participated in projects and worked closely with supervisors. When the Black intern raised concerns about unequal treatment with management, she was fired. In addition to the damages payment, the settlement requires that the laboratory adopt a non-discrimination policy and complaint procedure and conduct anti-discrimination training for its staff. ***EEOC v. Northwest Cosmetic Labs LLC*, Civil Action No. 10-608-CWD (D. Idaho Dec. 29, 2010)**.
- In May 2009, the federal district court in Minnesota dismissed the EEOC's lawsuit alleging that a Minneapolis-based company provided contract human resources services to more than 37,000 entities, allegedly disciplined and fired a Ph.D. social worker because of his race (African American) and his complaints about race discrimination. According to the EEOC, the six-year employee had his work scrutinized more critically than non-Black employees, was placed on a performance improvement plan because of his race, and was fired when he complained despite his excellent performance history and numerous awards. ***EEOC v. Ceridian Corp.*, Civil Action No. 07-cv-4086 (D. Minn. May 26, 2009)**.
- In February 2008, the Commission upheld an AJ's finding of race and color discrimination where a probationary employee was terminated from his position of Part-Time Flexible Letter Carrier. Although complainant was a probationary employee, the record reflected that he worked at the same level or better than other full-time carriers. The Commission found that, as no other probationary employee was available as a comparator, complainant established a prima facie

case of discrimination by creating an inference of race and color discrimination. Further, the Commission found that the agency failed to provide a legitimate, nondiscriminatory reason for terminating complainant because the responsible management official failed to specify a standard to which complainant was compared when he determined that complainant was not performing at an acceptable level. Complainant was reinstated to his position with backpay. ***Artis v. United States Postal Service*, EEOC Appeal No. 0720070032 (February 4, 2008).**

- In October 2007, a trial court determined that EEOC is entitled to a trial on its claim that a Toyota car dealership engaged in a wholesale elimination of Blacks in management when it demoted and ultimately terminated all of its African American managers because of their race. **See *EEOC v. David Maus Toyota*, Civil Action No. 6:05cv-1452-ORL-28-KRS (M.D. Fla. Oct. 30, 2007).**
- In July 2007, the EEOC received a favorable jury verdict in its Title VII lawsuit against the Great Atlantic & Pacific Tea Company (A&P) alleging that a Black senior manager terminated a White manager because of his race. The jury concluded the White manager was discharged solely because of his race and awarded approximately $85,000 in monetary relief. ***EEOC v. Great Atlantic & Pacific Tea Co.*, C.A. No. 1:05-cv-01211-JFM (D.Md. verdict filed July 30, 2007).**
- In December 2005, the Commission resolved for $145,000 this Title VII case alleging that a global company discharged a traffic clerk in a Colorado warehouse, based on his race (Black) and in retaliation for complaining about discrimination. The traffic clerk asserted that, prior to his discharge, his coworker, a White woman, expounded on her view that African Americans are more athletic than Whites because they were inbred as slaves and have an extra muscle in their legs, that she was afraid to be around certain people of color, and that a customer was entitled use the "n-word" in reference to the clerk based on freedom of speech. The clerk told her she should take her hood off and not burn a cross on his lawn. Defendant investigated the racial incidents, but failed to interview two Black employee witnesses and fired the clerk in part for the hood and cross comment he made. Neither the White coworker nor the supervisors who witnessed the racial incidents were disciplined. The 3-year consent decree enjoins defendant's Golden, Colorado facility from discriminating on the basis of race and from retaliation. ***EEOC v. Exel, Inc.*, No. 04-CV-2005-RPM-BNB (D. Col. Dec. 20, 2005).**

Types of Race/Color Discrimination

Color Discrimination

- In June 2015, a Laughlin hotel has agreed to pay $150,000 to six Latino or brown-skinned workers who were "subjected to a barrage of highly offensive and derogatory comments about their national origin and/or skin color since 2006." A federal lawsuit filed by the EEOC alleged that supervisors amd coworkers were "constantly" targeted with slurs such as "taco bell," "bean burrito" and "f____ aliens." The lawsuit also said workers were told not to speak Spanish on break, at least one employee lost his job after complaining about the treatment, and the company failed to correct the problems. In addition to monetary relief, the four-year consent decree required Pioneer Hotel must hire a consultant to help implement policies, procedures and training for all workers to prevent discrimination, harassment and retaliation. The company also will receive additional training on its responsibilities under Title VII, will have to immediately report complaints to the human resources department, and must create a centralized system to track complaints. ***EEOC v. Pioneer Hotel, Inc. d/b/a Pioneer Hotel and Gambling Hall***, Case No. 2:11-cv-01588-LRH-GWF (D. Nev. June 17, 2015).

- In June 2015, Pioneer Hotel, Inc. in Laughlin, Nevada agreed to pay $150,000 and furnish other relief to settle a national origin and color discrimination lawsuit filed by the EEOC. The EEOC charged that a class of Latino and/or brown-skinned workers was subjected to a barrage of highly offensive and derogatory comments about their national origin and/or skin color since at least 2006. Housekeeping and security department staffers in particular were constantly the targets of slurs by several supervisors and co-workers. In addition, the EEOC asserted that Latino / brown-skinned workers were told not to speak Spanish during their break times. Pioneer failed to stop and rectify the harassment and discrimination despite repeated complaints by the Latino / brown-skinned workers. Pioneer entered into a four-year consent decree that prohibits Pioneer from creating, facilitating or permitting a hostile work environment for employees who are Latino or darker-skinned. Additionally, the hotel agreed to hire an outside equal employment opportunity consultant to ensure that the company implements effective policies, procedures and training for all employees to prevent discrimination, harassment and retaliation. Pioneer management will receive additional training on its responsibilities under Title VII; be required to immediately report complaints to the human resources department; create a centralized system to track complaints; and be held accountable for failing to take appropriate action. Notice of consent decree will be visibly posted at the hotel. ***EEOC v. Pioneer Hotel, Inc. d/b/a Pioneer Hotel and Gambling Hall*, Case No. 2:11-cv-01588-LRH-GWF (D. Nev. settlement June 18, 2015).**
- In March 2012, a Fairfax County, Va.-based stone contracting company agreed to pay $40,000 and furnish other significant relief to settle an EEOC lawsuit alleging national origin, religion and color discrimination. According to the EEOC's suit, an estimator and assistant project manager was subjected to derogatory comments from his supervisors, project manager and the company's owner on the basis of his national origin (Pakistani), religion (Islam), and color (brown). The lawsuit indicated that the comments occurred almost daily and included things like telling the estimator he was the same color as human feces. The lawsuit also alleged that the estimator was told that his religion (Islam), was "f---ing backwards," and "f---ing crazy," and was asked why Muslims are such "monkeys." Pursuant to the three-year consent decree enjoining the company from engaging in any further discrimination against any person on the basis of color, national origin, or religion, the contracting company also agreed to redistribute the company's anti-harassment policy to each of its current employees; post its anti-harassment policies in all of its facilities and work sites; provide anti-harassment training to its managers, supervisors and employees; and post a notice about the settlement. ***EEOC v. Rugo Stone, LLC*, Civil Action No. 1:11-cv-915 (E.D. Va. Mar. 7, 2012).**
- In April 2011, the EEOC found that the transportation department engaged in race and color discrimination when it failed to select the Complainant, the Acting Division Secretary, for the position of Division Secretary. The EEOC found the Agency's explanation to be "so fraught with contradiction as not to be credible," and thus, a pretext for discrimination. The EEOC noted that Complainant discussed her experience as Acting Division Secretary in her KSA responses, and, contrary to the Agency's assertion, made numerous references to acting as a Division Secretary in her application. The EEOC ordered the placement of Complainant into the Division Secretary position, with appropriate back pay and benefits, and payment of attorney's fees and costs. ***Bowers v. Dep't of Transp.*, EEOC Appeal No. 0720100034 (Apr. 15, 2011).**
- In February 2009, a discount retail chain agreed to pay $7,500 to resolve an EEOC lawsuit alleging that Title VII was violated when a light skinned Black female manager subjected darker skinned African American employees to a hostile and abusive work environment because of their color. The lawsuit alleged that the manager told one employee she looked as "Black as

charcoal" and repeatedly called her "charcoal" until she quit. The parties entered a consent decree that enjoins the company from engaging in color discrimination or retaliation. Pursuant to the consent decree, the retail chain's store manager and assistant managers must receive training on color discrimination, the chain must keep records on any complaint of color discrimination and all information related to the complaint, and it must submit reports on these matters to the EEOC. ***EEOC v. Family Dollar Stores, Inc.*, No. 1:07-cv-06996 (N.D. Ill. settled Feb. 17, 2009)**.

- In April 2008, a national video store entered a consent decree to pay $80,000 and to provide neutral references for the claimant in resolution of the EEOC's Title VII lawsuit against it. The EEOC alleged that the store engaged in color discrimination when a Bangladeshi employee who was assigned to be store manager of a Staten Island location allegedly was told by her district supervisor that Staten Island was a predominantly White neighborhood and that she should change her dark skin color if she wanted to work in the area. EEOC asserted that the supervisor also allegedly told her that she really should be working in Harlem with her dark skin color and threatened to terminate her if she did not accept a demotion and a transfer to the Harlem store. The employee also was subjected to national origin discrimination based on her name and accent when the district supervisor allegedly excluded the employee from staff meetings because he said the other employees could not understand her accent and asked her to change her name because the customers could not pronounce it. The consent decree enjoins the video store from discriminating on the basis of race, color, or national origin and requires the store to post a remedial notice in the store in question and the EEO Poster in all locations across the country. ***EEOC v. Blockbuster, Inc.*, C.A. No. 1:07-cv-02221 (S.D.N.Y. filed *settled* Apr. 7, 2008)**.
- In May 2006, the Commission won a Title VII case filed on behalf of Asian Indian legal aliens who were victims of human trafficking, enslavement, and job segregation because of their race, national origin, and dark-skinned color. ***Chellen & EEOC v. John Pickle Co., Inc.*, 434 F.Supp.2d 1069 (N.D. Okl. 2006).**
- In August 2003, the EEOC obtained a $40,000 settlement on behalf of an African American former employee who was discriminated against based on his dark skin color by a light-skinned African American manager, and terminated when he complained to corporate headquarters. ***EEOC v. Applebee's Int'l Inc.*, No. 1:02-CV-829 (D. Ga. Aug. 7, 2003).**

Reverse Discrimination

- In June 2015, the EEOC filed an amicus brief in support of a pro se plaintiff whose race and age discrimination case was dismissed for failure to establish a prima facie case. The Commission argued in this appeal that the district court erred in dismissing the case because the general manager's repeated references to the plaintiff's race and age, such as "you're the wrong color" and "you're too old" along with plaintiff's supervisor's comment to her, "old white bi…" shortly before the general manager and supervisor terminated plaintiff were sufficient to establish a prima facie case and to provide evidence of pretext. ***Kilgore v. Trussville Develop.*, LLC, No. 15-11850 (11th Cir. brief filed June 22, 2015).**
- In September 2012, the County of Kauai in Hawaii paid $120,000 to settle a federal charge of race harassment filed with the EEOC. A former attorney for the County of Kauai's Office of the Prosecuting Attorney, who is Caucasian, alleged that she was harassed due to her race by a top-level manager. The manager allegedly made continually disparaging comments to the former attorney, saying that she needed to assimilate more into the local culture and break up with her boyfriend at the time, also White, in favor of a local boy. The EEOC ultimately found reasonable

cause to believe that the county violated Title VII of the Civil Rights Act of 1964 for the harassment to which the former attorney was subjected. Following the determination, the County of Kauai entered into an over two-year conciliation agreement with the EEOC and the alleged victim. Aside from the monetary relief, the county agreed to establish policies and complaint procedures dealing with discrimination and harassment in the workplace and to provide live EEO training to all managers and supervisors. The county further agreed to post notices on the matter on all bulletin boards throughout the county and to permit the disclosure of the settlement.

- In September 2012, the County of Kauai in Hawaii agreed to pay $120,000 to settle an EEOC charge of race harassment, alleging that a Caucasian former attorney for the County's Office of the Prosecuting Attorney was subjected to racially disparaging comments by a top-level manager. The manager allegedly referred to the Caucasian attorney as haole, and advised the former attorney that she needed to assimilate more into the local culture and break up with her boyfriend at the time, also White, in favor of a local boy. Aside from the monetary relief, the county agreed to establish policies and complaint procedures dealing with discrimination and harassment in the workplace and to provide live EEO training to all managers and supervisors. The county further agreed to post notices on the matter on all bulletin boards throughout the county and to permit the disclosure of the settlement.
- In June 2011, a national women's off-priced clothing retailer agreed to pay $246,500 and furnish other relief to 32 class members to settle a race discrimination lawsuit filed by the EEOC. EEOC had alleged that the retailer denied employment to Caucasian applicants since early 2007. During that time, the EEOC contended, the retailer regularly hired Black entry-level applicants for sales positions, but excluded White applicants who were equally or better qualified. The store manager allegedly told one applicant that the store "does not hire White people." ***EEOC v. Dots, LLC*, No. 2:10-cv-00318-JVB-APR (N.D. Ind. June 3, 2011)**.
- In July 2010, the Seventh Circuit affirmed the EEOC's rulings on race discrimination and retaliation claims in a case brought by a White "policymaking level" employee under the Government Employee Rights Act. John Linehan contested his removal as chief deputy coroner by the elected coroner, who is African American. Among other reasons for removal, the coroner testified that he disagreed with Linehan's attempts to discipline certain subordinate employees. The Court decided that there was substantial evidence to support the Commission's determination that the coroner's reasons for Linehan's demotion and subsequent termination were pretextual. In its view, the coroner's "lack of credibility, combined with his stated preference for employing African-Americans and his actions taken in furtherance of that goal, was sufficient for the EEOC to find that Linehan was subjected to race discrimination." However, the court vacated the $200,000 compensatory damages award as excessive and ruled that the EEOC and Linehan either could accept the remitted amount of $20,000 or hold a new hearing on the issue. ***Marion County v. EEOC & Linehan*, No. 09-3595 (7th Cir. July 27, 2010)**.
- In May 2009, the fast food giant Jack in the Box has agreed to pay $20,000 to settle a lawsuit alleging that the company did not take prompt action after a White hostess at its Nashville restaurant complained she was being harassed by Black co-workers who called her racial epithets and insulted her when they learned she was pregnant with a mixed-race child. ***EEOC v. Jack in the Box*, No. 3:08-cv-009663 (M.D. Tenn. settled May 19, 2009).**
- In April 2009, a private historically Black college located in Columbia, S.C. agreed to settle a Title VII lawsuit alleging that it discriminated against three White faculty members because of their race when it failed torenew their teaching contracts for the 2005-2006 school year, effectively terminating them. ***EEOC v. Benedict College*, No. 3:09-cv-00905-JFA-JRM (D.S.C. April 8, 2009).**

Same Race Discrimination

- In November 2007, the district court ruled in favor of the EEOC in its Title VII suit alleging that a Texas transportation shuttle service discriminated against African American drivers in favor of native African drivers by denying them the more profitable routes, sending them to destinations where no passengers awaited pickup, and misappropriating tips earned by the Black American drivers and instead giving them to the African drivers. The judgment prohibits Ethio Express's President, Berhane T. Tesfamariam , and his business partner Mohammed Bedru from engaging in other discriminatory practices in the future. The judgment also assessed $37,197.00 in monetary damages against Ethio Express. ***EEOC v. Ethio Express Shuttle Service, Inc. dba Texans Super Shuttle*, No. H-06-1096 (S.D. Tex. judgment entered Nov. 2007)**.
- In July 2006, EEOC settled a Title VII action against a Dallas-based HIV service agency, in which four Black employees were allegedly racially harassed by the center's founder and former Executive Director, who is also African American. The persistent same-race harassment - which was reported to management and the Board of Directors - included graphic language, racial slurs and pejorative insults. Although it ceased operations, the agency agreed to pay $200,000 to the aggrieved employees.***EEOC v. Renaissance III*, No. 3:05-1063-B (N.D. Tex. July 19, 2006).**
- In September 1998, an EEOC AJ properly decided that a Black male hospital director who abused all employees was not insulated from liability for racially harassing an African American female where evidence showed that she was the target of more egregious and public abuse than other employees. Evidence revealed that the director told her he only hired because she is a Black woman, he often used profanity toward her, referred to her by race and gender slurs, singled her out for verbal abuse in front of other employees, told plaintiff to "get your Black ass out of here", and told her and other Black managers they better not file EEO complaints. ***Veterans Admin.*, EEOC No. 140-97-8374x-RNS (Sept. 21, 1998).**

Intersectional Discrimination/Harassment

- **Race/Age**
    - In December 2016, the EEOC affirmed the Administrative Judge's (AJ) finding of race and age discrimination involving a 47-year old Black applicant. Following a hearing, the AJ found that the U.S. Department of Agriculture (Agency) discriminated against Complainant on the bases of race and age when it did not select him for a
    - Contracting Officer position. The AJ determined that Complainant's qualifications were plainly superior to the Selectee's qualifications in that Complainant had more years of contracting experience, had contracting experience involving more complex matters and higher monetary amounts, and had more years of supervisory experience. The AJ also found that the Selecting Official's testimony about the Selectee's qualifications was not credible and was not supported by the documentation in the record. On appeal, the Commission concluded that the AJ's finding was supported by substantial evidence, and agreed with the AJ that the Agency's legitimate, nondiscriminatory reason for not selecting Complainant was a pretext for race and age discrimination. While the Agency asserted that the Selecting Official's selection history precluded a finding of discrimination, the Commission stated that selection history is not controlling, and the AJ reasonably relied upon Complainant's prior performance appraisal as an indicator of his performance. Further, the AJ was entitled to draw a reasonable inference from the fact that the Selecting Official did not contact Complainant's supervisor despite having

contacted the Selectee's most recent supervisor. The Agency was ordered, among other things, to offer Complainant the position, pay him appropriate back pay and benefits, and pay him $5,000 in proven compensatory damages. ***Neil M. v. Dep't of Agric***., EEOC Appeal No. 0720140005 (Dec. 9, 2016).

- In March 2012, a financial services company formerly located in various cities in Michigan agreed to settle for $55,000 an age and race discrimination suit brought by the EEOC. The EEOC lawsuit alleged that Wells Fargo Financial failed to promote a highly qualified 47-year-old African-American loan processor on the basis of age and race. The loan processor applied for a promotion but was passed over for five lesser qualified Caucasian women aged between 23 and 30 who were based in various other branch offices, even though the processor had the best combination of relevant, objective scores that measured productivity, was "loan processor of the year" for 2007, the year immediately preceding the promotion decision, worked at one of the largest and most profitable offices in the relevant district, and was the "go-to person" for the district on loan processing. ***EEOC v. Wells Fargo Financial Michigan, Inc.*****, Case No. 2:10-CV-13517 (E.D. Mich. Mar. 22, 2012).**
- In November 2011, one of the nation's largest retailers will pay $100,000 and furnish other relief to settle the EEOC's race, sex and age discrimination and retaliation lawsuit. According to the EEOC lawsuit, an over 40, African-American female employee who worked in loss prevention at several Sears stores in the Oklahoma City area, from 1982 until her termination in March of 2010, was passed over for promotion to supervisor several times beginning in 2007 in favor of younger, less experienced, White males. Sears allegedly retaliated against Johnson for her initial EEOC discrimination charge in September 2007 by subjecting her to worsening terms and conditions at work. In addition to the $100,000 payment, Sears has agreed to take specified actions designed to prevent future discrimination, including the posting of anti-discrimination notices to employees, dissemination of its anti-discrimination policy and providing anti-discrimination training to employees. ***EEOC v. Sears*****, *Roebuck & Co.*****, No. 5:10-cv-01068-R (W.D. Okla. Nov. 4, 2011).**
- In October 2010, defendants, a Spring, Texas, new and used car dealership and its general partner, agreed to pay $160,000 and provide neutral references indicating their eligibility for rehire to a 50-year-old White male used car salesperson (Robinson) and a 50-year-old African American male used car salesperson (Cotton). EEOC alleged that an African American male sales supervisor subjected Cotton to derogatory comments about his age and made sexual advances towards him. The supervisor also allegedly threatened Robinson, that he would "get back at" him for the "terrible things whites had done to blacks" in the past and allegedly berated him for being "too old" for the job and "washed up" in the industry. Robinson reported the misconduct to several managers, but rather than taking corrective action, the director of used cars joined in the harassing conduct. Robinson later transferred to a lower-paid sales position to avoid the sales supervisor, but the sales supervisor ultimately transferred to a position in finance where he was responsible for approving paperwork on all sales, and he refused to process any of Robinson's sales transactions, causing Robinson to resign the same month. The 2-year consent decree enjoins sex and race harassment and discrimination and retaliation in violation of Title VII and age discrimination under the ADEA. Annually, defendants must provide copies of the decree to all supervisors and managers, and obtain signed statements that they have read the decree and agree to be bound by its

terms. ***EEOC v. Autotainment Partners Ltd., P'ship d/b/a Planet Ford and Worldwide Autotainmentt, Inc.*, No. 4:09-CV-03096 (S.D. Tex. Oct. 12, 2010)**.

- In June 2010, the Equal Employment Opportunity Commission and a Kansas-based national employment staffing firm settled for $125,000 a case on behalf of a White, 55-year-old former employee who allegedly was treated less favorably than younger Black colleagues and fired when she complained. According to the Commission's lawsuit, the staffing company unlawfully discriminated against a senior functional analyst, who was the oldest employee and only Caucasian in the department, because of her race and age in violation of Title VII and the ADEA when a young, African American supervisor subjected her to different treatment and terminated her when she complained. ***EEOC v. Spencer Reed Group*, No. 1:09-CV-2228 (N.D. Ga. consent decree approved 6/8/10).**
- In August 2006, a Pennsylvania health care company agreed to pay $16,000 to two older workers who allegedly were denied promotions based on their race (Black) and their ages (50 and 53), despite their extensive relevant experience of 13+ years. EEOC alleged that, instead of promoting one older Black employee, the company promoted a 28-year old Caucasian employee with seven months of experience and who did not meet the stated criteria for the position. In the two-year consent decree, the company states it will avoid engaging in racial discrimination or retaliation and must post a remedial notice and provide Title VII training to all supervisors and managers. In addition, the company must provide training in its policies on hiring, promotion, transfer, and co-employment. ***EEOC v. Mainline Health Care*, No.05-cv-4092(CN) (E.D. Pa. settled Aug. 25, 2006)**.
- In October 2007, the EEOC resolved a discrimination lawsuit alleging race and age discrimination for $48,000. The EEOC had charged that a South Carolina beauty salon violated federal law by refusing to promote a 51-year-old African American stylist. Between June and September 2006, three employees resigned from the salon manager position and in filling the salon manager position all three times, the salon selected a succession of three White employees from other salons whose ages ranged from late teens to early 20s even though the Black stylist was more than qualified to fill the position. ***EEOC v. Regis Corporation d/b/a SmartStyle,* Civil Action No.7:06-cv-02734 (D.S.C. settled October 5, 2007).**
- In June 2007, the Commission affirmed its decision that complainant, a 48-year old Black male Supervisory Deputy with the U.S. Marshals Service, was not selected for the position of Assistant Chief Deputy U.S. Marshal because of race, gender, and age discrimination when the agency's Career Board selected a 34-year old Caucasian female based on her academy achievement, work experience and interview. The Commission found that the record showed that complainant's qualifications were observably superior to those of the selectee, and concluded that the agency's stated reasons for not selecting complainant for the position in question were a pretext for discrimination. The agency was ordered to appoint complainant to the position of Assistant Chief Deputy U.S. Marshal, with back pay and benefits, and pay complainant $50,000.00 and attorney's fees. ***Washington v. Department of Justice*, EEOC Appeal No. 0720060092 (February 8, 2007), *request for reconsideration denied*, EEOC Request No. 0520070324 (June 15, 2007).**
- In November 2006, the EEOC affirmed an AJ's findings that a federal employee complainant was not selected for promotion to Team Leader based on race (African American), sex (female) and age (DOB 2/14/54), notwithstanding her qualifications, and

that she was subjected to discriminatory harassment by the same management official. The decision awarded complainant a retroactive promotion with back pay, $150,000 in compensatory damages and attorneys fees and costs. ***Goodridge v. SSA,*** **EEOC Appeal No. 0720050026 (November15, 2006).**

- In June 2006, a Newark port facility paid $28,500 to settle a race and age discrimination lawsuit brought by EEOC, which alleged that the facility's new manager mistreated and then fired a 56-year-old African American customer service representative, who was the only Black and oldest of seven employees, because of her race and age. ***EEOC v. Port Elizabeth Terminal & Warehouse,*** **Civil Action 05-cv-4828 (WJM) (D.N.J. June 22, 2006).**

- **Race/Disability**
  - In December 2009, a telemarketing company agreed to pay $60,000 to a Black former employee who EEOC alleged was immediately terminated following a diabetic episode at work in violation of Title VII and the ADA. The consent decree enjoins the company from engaging in racial discrimination and requires it to post a remedial notice and arrange training in racial discrimination for its managers and supervisors. The company also must submit reports to the EEOC on its compliance with the consent decree. See ***EEOC v. RMG Communications, LLC*****, Civil Action No. 1:08-cv-0947-JDT-TAB (S.D. Ind. settled Dec. 16, 2009).**
  - In November 2007, the Commission upheld an Administrative Judge's finding of discrimination on the bases of race (African-American), sex (female), and disability (cervical strain/sprain) when complainant was not accommodated with a high back chair. The agency was ordered to provide complainant with backpay for the period she was out of work due to the failure to accommodate, and complainant was awarded $2,250 in compensatory damages. ***Jones v. United States Postal Service*****, EEOC Appeal No. 0720070069 (November 8, 2007).**
  - An EEOC Administrative Judge's finding that a blanket policy excluding employees with Type I and II Diabetes adversely impacted African Americans and Native Americans resulted in a settlement and change in policy.
  - In June 2005, an AJ found direct evidence of retaliation and circumstantial evidence of race discrimination where the agency's managers did not act on the Black complainant's plea for mail handling assistance for many months before the complainant injured himself. The managers told him that he should have thought of this [that he might need future assistance from them] before he filed his [previous] EEO complaint. They also treated him differently than non-Black employees. The complainant suffered debilitating and career-ending shoulder, neck, arm, and back injuries and lapsed into a major depression. The AJ awarded 28 months of back pay and 24 months of from pay; lost benefits; compensatory damages of $120,000 for physical and mental pain and suffering; and approximately $40,000 in attorney's fees and costs. **See *USPS,* EEOC Hearing No. 370-2004-00099X (June 21, 2005).**
  - In April 2004, a letter carrier prevailed in part on his federal sector complaint alleging employment discrimination based on race/national origin (Asian), disability (PTSD), and retaliation. The allegations included that the Postal facility forced him to remain in a plywood shack for hours each day; disabled postal workers were routinely assigned to "the Box," as it was called, while non-disabled workers were never assigned to "the Box;" employees consigned to "the Box" did not have a telephone, radio, computer, or any other equipment with which to perform any work and were not given any work

assignments; and the disabled employees were required to knock on a little window in "the Box" when they needed to use to the restroom. AJ found that the Agency discriminated against this letter carrier on the basis of disability when it forced him to remain in the plywood shack, and when it denied him leave, but decided the remaining claims in the favor of the agency. The Commission affirmed the AJ's decision awarding $75,000.00 in non-pecuniary compensatory damages, restoration of sick leave, payment of attorneys fees and other expenses, and the dismantling of "the Box." **See *USPS,* EEOC Hearing No. 270-2003-090077X (April 20, 2004).**

- **Race/Gender**
    - In July 2012, hotel groups Pacific Hospitality and Seasons Hotel agreed to pay $365,000 and provide preventative measures to settle a federal harassment lawsuit by the EEOC. The EEOC charged in its lawsuit that the general manager who worked at both the Best Western Evergreen Inn (formerly La Quinta Federal Way) and Best Western Tacoma Dome persistently harassed and denigrated women, including those who were minorities and had strong religious beliefs, in violation of federal law. According to the EEOC, female employees were subjected to the constant use of racial slurs and derogatory sex-based and racial comments, yelling and physical intimidation. One employee had a stapler thrown at her head while another was told she was nothing but a "welfare mother" and should abort her pregnancy. The EEOC also alleged that the general manager also illegally fired five women after they revealed they were pregnant. Further, the EEOC alleged that the harasser belittled the various religious beliefs of employees, including calling a professed Christian "weak-minded" and allegedly telling another employee that she should have an abortion because she already had a child, and that she was her own God and could control her own destiny. ***EEOC v. Pacific Hospitality LLC d/b/a La Quinta Inn Federal Way*, No. 3:10-CV-5175 (W.D. Wash. consent decree entered July 3, 2012).**
    - In May 2011, the nation's second-largest pharmacy chain, a new owner of Longs Drugs, agreed to pay $55,000 to settle an EEOC race and sex discrimination lawsuit alleging that Longs subjected an African-American female product buyer to a hostile environment after hiring her in January 2007, and firing her in May 2008 in retaliation for her complaint to company managers. The suit claimed that the buyer was given more difficult tasks and less assistance than her colleagues who were not Black and female, was unfairly disciplined for performance scores that were higher than those of her White female co-workers who did not face any disciplinary action, and that the supervisor gave her White co-workers permission for vacation days but ignored the Black buyer's earlier requests for the same days. The suit further alleged that within a few months after the Black female buyer complained to human resources department about the differential treatment, she was discharged from her position. Although all of the alleged events occurred before the chain purchased Longs, the chain has agreed to institute new anti-discrimination staff training procedures.***EEOC v. Longs Drugs & CVS Caremark*, Civ No. 3:10-CV-04384-RS (May 31, 2011).**
    - In April 2011, a federal district court in Tennessee reaffirmed a court judgment of $1,073,261 when it denied the world's leading manufacturer and marketer of major home appliances' motion to reduce the victim's front and back pay awards. In December 2009, EEOC won the $1 million judgment in a race and sex discrimination suit following a four-day trial. The evidence showed that a Black female employee reported escalating offensive verbal conduct and gestures by her White male coworker over a period of two

months before he physically assaulted her at the Tennessee-based facility; four levels of Whirlpool's management were aware of the escalating harassment; Whirlpool failed to take effective steps to stop the harassment; and the employee suffered devastating permanent mental injuries that will prevent her from working again as a result of the assault and Whirlpool's failure to protect her. On January 15, 2011, the corporation asked that the damages be reduced because, inter alia, the plant where the victim had worked had closed. The court denied the request. ***EEOC v. Whirlpool Corp.*, Civil Action No. 3:06-0593 (M.D. Tenn. Apr. 1, 2011).** Whirlpool appealed. On June 11, 2012, Whirlpool Corporation agreed to pay one million dollars and court costs to settle the lawsuit, drawing to a close six years of litigation.

- In March 2011, the Ninth Circuit affirmed the judgment of the district court against a major auto parts chain because it had permitted an African American female customer service representative (rep) to be sexually harassed by her Hispanic store manager. The manager's harassment included "humping" her from behind, grabbing her head, demanding that she perform oral sex on him, telling customers that she had AIDS "because it was proven that 83 percent of African American women had AIDS," calling her a slut, and slapping her in the face with his penis. The jury awarded $15,000 in compensatory damages and $50,000 in punitive damages to the rep. The Ninth Circuit ruled that the jurors could have reasonably determined that the district manager and regional human resources manager failed to exercise reasonable care to correct promptly "the obscene and harassing behavior" of the store since management did not check the video cameras that were in parts of the store where the rep was assaulted, the investigation was not confidential, certain employees were never interviewed, the harassment was not reported to the corporate office, critical corroborating evidence was lost, and the rep had complained to management "immediately and repeatedly." The Court also affirmed the punitive damages award because a reasonable juror could conclude that the company had not acted in good faith to comply with Title VII when the human resources manager threatened to terminate the rep for hitting the store manager while defending herself against the sexual assault. ***AutoZone, Inc. v. EEOC*, 2011 WL 883658 (9th Cir. Mar. 15, 2011).**
- In March 2007, EEOC upheld an AJ's finding that complainant was subjected to a hostile work environment on the bases of her race (African American) and sex (female) when management: yelled at complainant; refused to communicate with her on work matters; failed to assist her; interfered with her work; removed her space leasing duties and responsibilities which fundamentally changed the nature of her position; and engaged in an effort to get her off the leasing team. Remedial relief included back pay, benefits including reimbursement of leave, compensatory damages and attorney's fees, posting of a notice, training, and recommended disciplinary action against the responsible management officials. ***Burton v. Department of the Interior*, EEOC Appeal No. 0720050066 (March 6, 2007).**
- In December 2004, the Commission affirmed an AJ's finding that a Black female complainant was subjected to discrimination on the basis of her race and sex with regard to the processing and approval of her application for telecommuting and her request for advanced sick leave. The Commission noted that, while complainant was asked to provide additional information concerning child care and told that she would have to submit to a home inspection, a White male employee who also had children at home was not asked to do so. The agency was ordered to pay complainant $100,000.00

in compensatory damages, expunge any derogatory materials relating to complainant's performance, and pay attorney's fees and costs.***Ellis-Balone v. Department of Energy*, EEOC Appeal No. 07A30125 (December 29, 2004).**

- In September 2004, an AJ determined that a Black male complainant was subjected to race discrimination when he was not selected for an EEO Specialist (Mediator) position despite having performed the duties of the position in the area in which he applied. Testimony in the record showed that the approving official was biased against those of complainant's race, particularly males. In addition, it was suspected that none of the seven members of complainant's race who had been performing the Mediator duties were selected for the position, while the one individual outside of complainant's race was chosen. **See *McMillian v. Department of Transportation*, EEOC Appeal No. 07A40088 (September 28, 2004), *requests for reconsideration denied*, EEOC Request No. 05A50171 (December 13, 2004), & EEOC Request No. 05A50361 (April 25, 2005).**

- **Race/National Origin**
  - In March 2017, an Illinois sheet metal and HVAC company paid $325,000 to settle EEOC charges that it subjected a Black Puerto Rican worker to national origin, race and color harassment that culminated in a brutal physical assault. The harassment by White employees of King-Lar Co. directed at the employee included calling him "Mexican nigger," "wetback" and "nigger slave," the Commission alleged in a lawsuit filed in August 2015. Under a 30-month consent decree, the company must designate an EEOC-approved individual to conduct independent investigations into future complaints of workplace harassment and determine what, if any, disciplinary and corrective action needs to be taken in response to a harassment complaint. King-Lar's policies and training materials also must reference the name and contact information for the designated employee as well as an 800 number and website that employees can use to make anonymous complaints. The company also agreed to fulfill notice-posting, training, and reporting requirements. ***EEOC v. King-Lar Co***., No. 3:15-cv-03238 (C.D. Ill. consent decree filed 3/29/17).
  - In December 2012, an agricultural farm in Norman Park, Ga., has agreed to pay $500,000 to a class of American seasonal workers - many of them African-American - who, the EEOC alleged, were subjected to discrimination based on their national origin and/or race. The EEOC's suit had charged that the company unlawfully engaged in a pattern or practice of discrimination against American workers by firing virtually all American workers while retaining workers from Mexico during the 2009, 2010 and 2011 growing seasons. The agency also alleged that Hamilton Growers fired at least 16 African-American workers in 2009 based on race and/or national origin as their termination was coupled with race-based comments by a management official. Additionally, the lawsuit charged that Hamilton Growers provided lesser job opportunities to American workers by assigning them to pick vegetables in fields which had already been picked by foreign workers, which resulted in Americans earning less pay than their Mexican counterparts. Pursuant to the consent decree settling the suit, the Hamilton Growers will exercise good faith in hiring and retaining qualified workers of American national origin and African-American workers for all farm work positions, including supervisory positions. Hamilton Growers will also implement non-discriminatory hiring measures, which include targeted recruitment and advertising, appointment of a compliance official, and training for positive equal employment opportunity management practices. The company has also pledged, among other things,

to create a termination appeal process; extend rehire offers to aggrieved individuals from the 2009-2012 growing seasons; provide transportation for American workers which is essential to viable employment in that part of the country; and limit contact between the alleged discriminating management officials and American workers. The decree also provides for posting anti-discrimination notices, record-keeping and reporting to the EEOC. ***EEOC v. Hamilton Growers, Inc. d/b/a Southern Valley Fruit and Vegetable, Inc.,* No. 11-cv-134 (M.D. Ga. consent decree filed 12/10/12).**

- In August 2011, New York University agreed to pay $210,000 in lost wages and compensatory damages to settle a racial and national origin harassment lawsuit by the EEOC, alleging that an African NYU Library employee from Ghana was subjected to racial slurs, such as "monkey" and "gorilla" and insults such as "do you want a banana," "go back to the jungle," and "go back to your cage" by his mailroom supervisor. Pursuant to a three-year consent decree, the university also will improve and implement university-wide enhanced policies and complaint procedures; designate an EEO coordinator to monitor NYU's compliance with federal anti-discrimination laws; conduct in-person, comprehensive EEO training sessions for employees, supervisors, and HR staff; and maintain records of its responses to future employee complaints of discrimination, harassment, and retaliation. ***EEOC v. NYU*, No. 10-CV-7399 (S.D.N.Y. Aug. 16, 2011).**
- In June 2011, a leading provider of advanced office technology and innovative document imaging products, services and software agreed to pay $125,000 and to provide substantial affirmative relief to settle a Title VII case alleging race, national origin, and retaliation claims. The EEOC had charged the company with subjecting a Black Liberian employee to harassment because of his race and national origin and two Hispanic employees, one Colombian and the other Puerto Rican, to harassment based on national origin at one of its work sites in Greensboro, N.C. The lawsuit further charged that the company suspended and then fired all three employees for complaining about the harassment. The alleged unlawful conduct included the site manager commenting to the three employees that she "hated Puerto Ricans," that "Hispanics are so stupid," that "Colombians are good for nothing except drugs," and that "damn, f-----g Africans . . .ain't worth s--t." In addition to providing monetary relief, the company agreed to conduct employee training on its anti-harassment policy and make the policy available to all employees. The company also will report all harassment complaints of race or national origin harassment to the EEOC for the next two years. ***EEOC v. Ricoh Americas Corporation*, Civil Action No. 1:10-cv-00743 (M.D.N.C. settled June 15, 2011).**
- In April 2011, a provider of operational support software and back office services deployed by cable and broadband operators worldwide agreed to pay $60,000 to settle a race and national origin discrimination lawsuit. In September 2010, the EEOC had filed the lawsuit alleging that the company fired a Black Tanzanian network operations analyst because of her race and national origin. The analyst was terminated allegedly because she left work 30 minutes early to beat the traffic. However, the employer did not fire a Caucasian employee who they left two hours early on two different days because he was tired. The consent decree also includes provisions for equal employment opportunity training, reporting, and posting of anti-discrimination notices. ***EEOC v. Integrated Broadband Services*, No. 1:10-03106 (N.D. Ga. settled Apr. 5, 2011).**

- In November 2008, a popular pizzeria based in Ferndale, Mich. agreed to pay $20,000 to resolve an EEOC lawsuit alleging that the pizzeria violated federal law when it told two qualified Black job seekers for waitress positions, one of whom is African and spoke with an accent, on two separate occasions that it had run out of applications but hired a White applicant as a waitress later the same day without requiring her to fill out an application. In the consent decree, the pizzeria agreed to provide equal employment and hiring opportunities in all positions and Title VII training for supervisors, managers, and owners. The consent decree also requires the pizzeria to keep records on information relevant to whether unlawful practices have been committed and its hiring data, and to submit reports to the EEOC on this information. ***EEOC v. Como's of Ferndale*, Case No. 2:07-cv-14091 (E.D. Mich. Nov. 24, 2008).**
- In February 2008, a restaurant agreed to pay $165,000 to resolve a Title VII lawsuit EEOC brought on behalf of a dining manager who was Arab and Moroccan because he and an Arab waiter from Tunisia allegedly had been subjected to customer harassment based on race and national origin and then the manager was fired in retaliation for opposing the harassment. According to the EEOC's investigation, when the dining manager complained, the customer turned on him, saying, "If you don't like it, why don't you go back to your country?" and "I fought two wars to get rid of people like you!" The parties entered a three-year consent decree which enjoins the restaurant from engaging in race and national origin discrimination or retaliation. The restaurant also must revise its discrimination complaint and investigation policies and disseminate them when they are approved by the EEOC as well as create a complaint procedure that is designed to encourage employees to come forward with incidents of racial discrimination. Additionally, the restaurant must train its employees in anti-discrimination laws and policies and impose appropriate disciplinary measures against supervisors who engage in discrimination.***EEOC v. Albion River Inn*, No. C-06-5356 SI (N.D. Cal. settled Feb. 27, 2008).**
- In December 2007, a convenience store distributor paid $100,000 to resolve an EEOC lawsuit alleging race, color, and national origin discrimination. EEOC alleged that a Black employee from West Guinea, Africa was subjected to verbal and physical harassment and then fired when he complained. The consent decree requires the company to implement a policy prohibiting race, color, and national origin harassment. The company also must submit reports to the EEOC demonstrating its compliance with the consent decree. ***EEOC v. Eby-Brown, LLC*, No. 1:06-CV-1083-SEB-VSS (S.D. Ind. Dec. 20, 2007).**
- In November 2007, a high-end suburban Illinois retirement facility agreed to pay $125,000 to settle a discrimination lawsuit alleging that it terminated its director of nursing, because of her national origin (Filipino) and race (Asian). The federal district court approved a two-year consent decree requiring the facility to provide training regarding anti-discrimination laws to all its employees; post a notice informing its employees of the consent decree; report to the EEOC any complaints of discrimination made by its employees; and take affirmative steps to recruit Asian nurses. ***EEOC v. Presbyterian Homes,* Case No. 07 C 5443 (N.D. Ill. Nov. 28, 2007)**.
- In March 2007, MBNA-America agreed to pay $147,000 to settle a Title VII lawsuit alleging discrimination and harassment based on race and national origin. According to the lawsuit, an Asian Indian employee was subjected to ethnic taunts, such as being called "dot-head" and "Osama Bin Laden," was physically attacked by a coworker with a

learning disability who believed he was Osama's brother, and was denied training and promotional opportunities afforded to his White coworkers. ***EEOC v. MBNA-America*** **(E.D. Pa. Mar. 2007).**

- In December 2006, a New York apple farm agreed to pay $100,000 to Jamaican migrant workers holding H-2B worker's visas who were allegedly subjected them to different terms and conditions of employment on the basis of their race (African-Caribbean), color (Black), and national origin (Jamaican). EEOC asserted in the lawsuit that the farm harassed Jamaican migrant workers and forced them to pay rent while permitting non-Jamaicans to live in housing rent-free in violation of Title VII. ***EEOC v. Porpiglia Farms,*** **Civil Action No.06-cv-1124 (N.D.N.Y. Dec. 22, 2006).**
- In January 2006, the Commission settled for $200,000 a case against Bally North America filed on behalf of a former manager of its Honolulu store who was harassed and fired due to her Asian race and Chinese national origin. ***EEOC v. Bally North America, Inc.,*** **No. 05-000631 (D. Haw. Jan. 2006).**

- **Race/Pregnancy**
  - In July 2008, a Florida laundry services company agreed to pay $80,000 and furnish other remedial relief to settle an EEOC discrimination lawsuit. The EEOC had charged that a Black Haitian laundry worker at Sodexho Laundry Services, Inc. lost her job because of her race, national origin and pregnancy. The employee had developed complications early in her pregnancy, obtained a light duty assignment, but was not permitted to continue her light duty assignment after her doctor imposed lifting restrictions even though Hispanic managers routinely assigned pregnant Hispanic women to light-duty work at the same time she was being denied the same opportunity. ***EEOC v. Sodexho Laundry Services, Inc.*** **(S.D. Fla. settled July 2008).**
  - In October 2006, EEOC obtained a $30,600 settlement in Title VII suit, alleging that a California-based office equipment supplier had fired an accounts payable specialist because she was African-American and because she had been pregnant, when it told her that after she returned from maternity leave, her assignment was complete and there were no other positions in the accounting department, permanently placed a non-Black, non-pregnant female who she had trained to fill-in during her maternity leave in her former position, and a week later hired a non-Black male to work in another accounting position in the same department. ***EEOC v. Taylor Made Digital Systems, Inc.*****, No. C-05-3952 JCS (N.D. Cal. Oct. 25, 2006).**
- **Race/Religion**
  - In March 2013, a not-for-profit developer of real estate, offices, and facilities around Grand Central Terminal in New York City paid $135,000 to settle a lawsuit filed by EEOC. The EEOC's lawsuit asserted that a non-Rastafarian security officer threatened to shoot a group of Rastafarian officers. When the Rastafarians complained, a white security supervisor made light of the physical threat and implied the Rastafarians were at fault. One Rastafarian security officer objected to the supervisor's reaction and complained that he heard the supervisor had referred to the Rastafarians by the "N-word." The Rastafarian security officer immediately contacted EEOC about the incident. The EEOC had previously sued the developer for failing to accommodate the religious beliefs of four Rastafarian employees who needed modifications to its dress code. That lawsuit was resolved by a 2009 consent decree which prohibited Grand Central Partnership from retaliating against Rastafarian security officers for their participation in the lawsuit,

but the developer's current conduct constituted a breach of the earlier consent decree. In addition to the monetary relief, the new consent decree requires the developer to conduct extensive training on investigating discrimination complaints, including methods for proper documentation and unbiased assessment of witness credibility. The decree also requires developer to regularly report to EEOC about any further complaints of religious discrimination or retaliation. ***EEOC v. Grand Central Partnership, Inc.*, No. 1:11-cv-09682 (S.D.N.Y. Mar. 1, 2013)**.

- In June 2011, a district court ruled that the EEOC could proceed with its two Title VII cases alleging race, national origin, and religion discrimination by a meatpacking firm against a class of Black Somali Muslim workers at its facilities in Greeley, Colo., and Grand Island, Neb. even though the relevant union local is not a party to the suit. EEOC alleged that the company failed to accommodate the Muslim workers' religious beliefs by hindering their prayer breaks and Ramadan observances, and that supervisors and co-workers harassed the Somali workers by uttering vulgar epithets and throwing bones, meat, and blood at them. In September 2008, the company locked out, suspended, and ultimately fired Somali Muslim employees in Greeley who had walked outside the plant to break their Ramadan fasts, EEOC alleged. The company claimed the entire case should be dismissed either because EEOC failed to join the relevant local union, which the company believed was a necessary party to the litigation, EEOC failed to conciliate the discrimination charges, and the plaintiff-intervenors failed to exhaust their administrative remedies. The court rejected the first two arguments, and issued a mixed ruling on whether the intervenors' claims had been exhausted. ***EEOC v. JBS USA LLC d/b/a JBS Swift & Co.*, No. 10-cv-02103 (D. Colo. June 9, 2011).**
- In January 2009, a cocktail lounge agreed to pay $41,000 to settle an EEOC lawsuit alleging that the lounge engaged in race and religious discrimination when it refused to promote an African American employee who wears a headscarf in observance of her Muslim faith to be a cocktail server because the owner said she was looking only for what she termed "hot, White girls." In accordance with the five-year consent decree, the company is enjoined from engaging in racial and religious discrimination or retaliation and must implement and enforce anti-discrimination policies, procedures, and training for all employees. The consent decree also requires the owner/manager to attend individual training on EEO issues and the company must report to the EEOC on its compliance with the consent decree. ***EEOC v. Starlight Lounge*, No. 2:06-cv-03075 (E.D. Wash. Jan. 13, 2009).**
- In July 2008, an Oregon video company paid $630,000 to resolve an EEOC lawsuit alleging that two employees, an African American who was converting to Judaism and a Hispanic with some Jewish ancestry, were forced to endure repeated racial, religious, and national origin jokes, slurs and derogatory comments made by employees and upper management since the beginning of their employment in 2005. EEOC also charged that the company then engaged in a series of acts designed to punish the victims for complaining and to ridicule those who corroborated the complaints. The parties entered a three-year consent decree on July 30, 2008, which enjoins the company from engaging in racial discrimination or retaliation and requires the company to institute an equal employment opportunity policy and distribute this new policy to its employees. The consent decree also requires four hours of Title VII training for all Video Only employees.***EEOC v. Video Only*, No. 3:06-cv-01362 (D. Or. July 30, 2008).**

- **Race/Sex**

- In October 2019, the EEOC's Office of Federal Operation found that the U.S. Bureau of Prison's (BOP) Devens Federal Medical Center in Ayer, MA discriminated against a Hispanic female former Health Information Technician on the basis of race and sex when a supervisor gave her an unwarranted negative reference which cost her the job. The employee was required to get a reference from her supervisor when she applied for a job to become a U.S. Public Health Service officer at the prison. The prison officer job would have meant the Hispanic employee would have had as much or greater authority as her current supervisor. The EEOC found that the employee's supervisor, an Asian woman, "intentionally sabotaged" complainant because she did not want a Hispanic woman "to potentially serve as her supervisor." The complainant also alleged that the supervisor only wanted to promote Caucasian employees. The EEOC ordered the BOP, among other things, to consider disciplinary action against the supervisor and to pay the job seeker damages. *Thomasina B. v. U.S. Bureau of Prisons*, EEOC Appeal No. (Oct. 2019).
- In June 2017, the EEOC reversed the Administrative Judge's finding of no discrimination by summary judgment, which the Department of Homeland Security (Agency) adopted, regarding Complainant's claim that the Agency discriminated against her, an African American woman, when it failed to select her for a promotion. The Commission instead found that summary judgment in favor of Complainant was appropriate. The Selecting Official stated that she did not select Complainant for the position because Complainant did not demonstrate experience relevant to the job description, while the Selectee did demonstrate relevant experience and received the highest interview score. The record, however, showed that Complainant specifically listed relevant experience in all areas identified by the Selecting Official, and that the Selectee's application failed to establish relevant experience in two areas. In addition, one of the individuals on the interview panel stated that the Selectee was not completely qualified for the position. The Agency also appeared to have violated its Merit Promotion Plan by having a lower-level employee participate in the interview panel. Therefore, the Commission found that Complainant established that the Agency's stated reasons for her non-selection were a pretext for race and sex discrimination. The Agency was ordered, among other things, to offer Complainant the position or a substantially similar position, and pay her appropriate back pay, interest, and benefits. ***Shayna P. v. Dep't of Homeland Sec***., EEOC Appeal No. 0120141506 (June 2, 2017).

Associational Discrimination

- In February 2011, a family-owned restaurant agreed to pay $25,000 to settle an EEOC case alleging that it violated Title VII when it demoted and discharged an African-American employee because of his race, and then discharged a Caucasian employee because of her association with him. The EEOC complaint stated that the African-American employee was subjected to derogatory remarks, such as use of the N-word, from both the restaurant's co-owner and customers. The Caucasian employee also was called derogatory names, such as "N-lover," when she turned down customers for dates. These customers also threatened to get her fired because of her association with the African-American employee. The restaurant also allegedly failed to display information regarding federal anti-discrimination laws. The consent decree enjoins the company from engaging in racial discrimination or retaliation and requires the company to post the EEO Poster in an area visible to all employees. In addition, the company must also create

and post an anti-discrimination policy in the restaurant, train its employees annually on Title VII requirements, and submit written reports regarding any future complaints alleging discrimination to the EEOC. ***EEOC v. Marvin's Fresh Farmhouse, Inc.*, No. 1:10-cv-00818 (M.D.N.C. consent decree filed February 24, 2011).**

- In May 2010, an apartment management company paid $90,000 in monetary relief and agreed to provide affirmative relief to settle an EEOC lawsuit alleging that the company violated Title VII by firing a White manager in retaliation for hiring a Black employee in contravention of a directive by one of the owners to maintain a "certain look" in the office, which did not include African Americans. Pursuant to the three-year consent decree, the company is enjoined from engaging in retaliation or racial discrimination and required to implement a written anti-discrimination policy. The company also must provide equal employment opportunity training for all of its employees and post a remedial notice. ***EEOC v. Management Solutions, Inc.*, No. SA09CA0655XR (W.D. Tex. May 7, 2010).**
- In June 2009, a restaurant, which was accused of creating a hostile work environment for Black, White, and female employees, settled an EEOC lawsuit for $500,000 and specific relief. According to the lawsuit, White employees were harassed because of their association with Black coworkers and family members, including being referred to as "n----r lovers" and "race traitors" by White managers. Additionally, Black workers were terminated because of their race, female workers were subjected to a sex-based hostile work environment, which included male managers making sexual advances and calling them gender-related epithets such as "b-----s.", and all complainants suffered retaliation for reporting the discrimination. ***EEOC v. Fire Mountain Restaurants LLC, d/b/a Ryan's Family Steakhouse*, No. 5:08-cv-00160-TBR (W.D. Ky. June 15, 2009).**
- In February 2009, the Sixth Circuit published a favorable decision in a Title VII associational discrimination case in which the EEOC participated as amicus curiae. According to the lawsuit, three White workers at the Whirlpool plant in LaVergne, Tennessee, witnessed numerous instances of racial hostility and slurs directed at their Black coworkers. Because they maintained friendly relationships with, and engaged in various acts of advocacy on behalf of, their Black coworkers, they became targets of various threats and harassment by other White employees who were responsible for the racial hostility directed against their Black colleagues. The hostile conduct ranged from "cold shoulder" type behavior to the use of the term "nigger lover," references to the KKK, and direct threats on their lives, as well as being told to "stay with their own kind." The Sixth Circuit Court of Appeals affirmed in part, reversed in part, and remanded the district court's decision granting summary judgment to the defendant on the White plaintiffs' Title VII claims alleging that they were subjected to a racially hostile work environment based on their association with their Black coworkers. Agreeing with the position taken by the Commission as amicus curiae, the court of appeals held that there is no prerequisite degree or type of association between two individuals of different races in order to state a claim for associational discrimination or harassment, so long as the plaintiff can show that she was discriminated against because of her association with a person of a different race. The court of appeals also held that no particular degree or type of advocacy on behalf of individuals of a different race is required to state an associational discrimination claim based on this theory, again, so long as a plaintiff can show that she was discriminated against based on her advocacy on behalf of such individuals. ***Barrett v. Whirlpool Corp.*, No. 556 F.3d 502, 515 (6th Cir. 2009).**
- In March 2008, a wholesaler book company settled an EEOC lawsuit alleging that it violated Title VII when the owner verbally harassed a White female employee after he learned she had biracial children such as stating that they were "too dark to be hers." The suit also alleged that

the owner made sex and race-based insults to a class of other employees and retaliated against them when the complained or cooperated with the EEOC's investigation. The settlement included a donation of $10,000 value of books or 1000 books relevant to the EEOC's mission, which will be given to a non-profit organization with an after-school program. ***EEOC v. Books for Less*, C.A. No. 06-4577 (E.D.N.Y. Mar. 10, 2008).**

- In July 2007, EEOC sued a steakhouse restaurant chain for permitting its customers to harass a White employee because of her association with persons of a different race. The case settled for $75,000 and injunctive relief which included mandatory EEO training for managers, supervisors and employees. ***EEOC v. Ponderosa Steakhouse,* No. 1:06-cv-142-JDT-TAB (S.D. Ind. settled July 3, 2007).**
- In May 2006, EEOC settled a hostile work environment case against a retail furniture store chain for $275,000. The store manager allegedly made racially and sexually offensive remarks to a Black employee, referred to the African Americans as "you people" and interracial couples as "Oreos" or "Zebras," and disparaged the employee for marrying a Caucasian man. ***EEOC v. R.T.G. Furniture Corp.*, No. 8:04-cv-T24-TBM (M.D. Fla. May 16, 2006).**
- In April 2006, the Commission resolved a race discrimination lawsuit challenging the termination of a White female employee who worked without incident for a hotel and conference center until management saw her biracial children. ***EEOC v. Jax Inn's/Spindrifter Hotel*, No. 3:04-cv-978-J-16-MMH (M.D. Fla. April 2006).**
- In January 2004, the Commission affirmed an AJ's finding that complainant was subjected to associational race discrimination (African-American who associates with White employees). The record showed that complainant had a close working relationship with White managers, which the selecting official held against her because of her race. The record evidence showed that the selecting official's actions in not choosing complainant for the position were intended to show the White managers that they were not running the region, and that he had a philosophy of rewarding African-American employees who aligned themselves with him instead of those, like complainant, who aligned themselves with White managers. ***Wiggins v. Social Security Administration*, EEOC Appeal No. 07A30048 (January 22, 2004).**

Biracial Discrimination

- In April 2007, a Virginia steel contractor settled for $27,500 a Title VII lawsuit, charging that it subjected a biracial (Black/White) employee to harassment based on race and color and then retaliated against him when he complained. ***EEOC v. Bolling Steel Co.*, Civ. Action No. 7:06-000586 (W.D. Va. April 25, 2007).**
- In March 2004, the EEOC settled a hostile work environment case in which a Caucasian-looking employee, who had a White mother and Black father, was repeatedly subjected to racially offensive comments about Black people after a White coworker learned she was biracial. When the employee complained, she was told to "pray about it" or "leave" by the owner; the employee resigned. The company agreed to pay $45,000 to the biracial employee, to create a policy on racial harassment, and to train the owner, managers, and employees about how to prevent and address race discrimination in the workplace. ***EEOC v. Jefferson Pain & Rehabilitation Center,* No. 03-cv-1329 (W.D. Pa. settled March 10, 2004).**

Code Words

- In January 2017, Gonnella Baking Co. of Chicago, an established bread and rolls manufacturer, agreed to pay $30,000 to settle an EEOC lawsuit alleging racial harassment at the company's Aurora, Ill., facility. According to the EEOC's complaint, Gonnella violated federal law by allegedly failing to respond adequately to a Black employee's complaints that he endured a pervasive pattern of disparaging racial comments made by his co-workers. Examples of the harassing conduct included persistent coded references to black employees as "you people," as well as offensive statements such as, "Black people are lazy," and "I better watch my wallet around you." As part of the consent decree, Gonnella must also provide training to its employees on civility in the workplace and must institute a policy holding managers and supervisors responsible for preventing and stopping harassment in the workplace. <**em>EEOC v. Gonnella Baking Co.**, Civil Action No. 15-cv-4892 (N.D. Ill. consent decree filed Jan. 10, 2017).
- In July 2010, Area Temps, Inc., a northeast Ohio temporary labor agency, agreed to pay $650,000 to resolve an EEOC lawsuit alleging that the company engaged in a systematic practice of considering and assigning (or rejecting) job applicants by race, sex, Hispanic national origin and age. The EEOC said that Area Temps used code words to describe its clients and applicants for discriminatory purposes, such as "chocolate cupcake" for young African American women, "hockey player" for young White males, "figure skater" for White females, "basketball player" for Black males, and "small hands" for women in general. ***EEOC v. Area Temps***, No. 1:07-cv-02964 (N.D. Ohio consent decree filed July 21, 2010).
- In April 2011, the EEOC affirmed an agency's final decision because the preponderance of the evidence of record did not establish that discrimination occurred. Complainant had filed a formal EEO complaint alleging he was subjected to discriminatory harassment while in Iraq on the basis of his race (African-American) when, among other things, the word "DAN" was used by a coworker, which he learned meant "Dumb Ass Nigger," and management took no action. The evidence of record established, however, that the "DAN" comment was unlikely used in complainant's presence as he could not recall who said it and he conceded it was not directed at him. He also said he did not know what it meant until another employee told him and did not report the comment to management. Instead, another employee informed complainant's supervisor about the comment, and the supervisor promptly looked into the matter. When the supervisor was unable to establish who made the comment, he convened all the welders and threatened disciplinary action if the term was used again. There was no evidence that the term or any other racial epithet was used after this meeting. ***Battle v. McHugh*, 2011 EEOPUB LEXIS 1063, EEOC Appeal No. 0120092518 (Apr. 27, 2011).**
- In July 2010, one of the largest temporary placement agencies in Greater Cleveland area agreed to pay $650,000 to settle an employment discrimination lawsuit brought by the EEOC. The EEOC alleged that the temp agency violated federal law by matching workers with companies' requests for people of a certain race, age, gender and national origin and illegally profiling applicants according to their race and other demographic information using code words to describe its clients and applicants. The code words at issue included "chocolate cupcake" for young African American women, "hockey player" for a young White male, "figure skater" for White females, "basketball player" for Black males, and "small hands" for females in general. ***EEOC v. Area Temps, Inc.*, No. 1:07-cv-2964 (N.D. Ohio July 21, 2010).**
- In December 2009, a national restaurant chain settled a racial harassment lawsuit brought by EEOC for $1.26 million and significant remedial relief in a case alleging repeated racial harassment of 37 Black workers at the company's Beachwood, Ohio location. In its lawsuit, the EEOC charged that Bahama Breeze managers committed numerous and persistent acts of racial harassment against Black employees, including frequently addressing Black staff with slurs such

as "n….r," "Aunt Jemima," "homeboy," "stupid n….r," and "you people." Additionally, managers allegedly imitated what they perceived to be the speech and mannerisms of Black employees, and denied them breaks while allowing breaks to White employees. Despite the employees' complaints to management, the alleged race-based harassment continued. The three-year consent decree resolving the litigation contains significant injunctive relief requiring Bahama Breeze to update its EEO policies nationwide, provide anti-discrimination and diversity training to its managers and employees, and provide written reports regarding discrimination complaints. ***EEOC v. GMRI, Inc. d/b/a Bahama Breeze*, 1:08-cv-2214 (N.D. Ohio Dec. 11, 2009).**

- In September 2007, the EEOC filed a Title VII racial harassment case against a food and beverage distributor, alleging that the company subjected a Black employee to a racially hostile work environment when a co-worker repeatedly called him "Cornelius" in reference to an ape character from the movie, "Planet of the Apes," management officials were aware of the term's racially derogatory reference to the employee and an ape character from the movie, but terminated his employment once he objected to the racial harassment. In May 2009, the district court ruled that the distributor was not liable for racial harassment or retaliation under Title VII because the employer took prompt and remedial action once it was notified of the racial slur and because it terminated the employee misconduct, not because he opposed race discrimination. ***EEOC v. Dairy Fresh Foods, Inc.*, No. 2:07CV14085 (E.D. Mich. May 29, 2009).**
- In August 2007, a San Jose body shop agreed to pay $45,000 to settle a sexual and racial harassment lawsuit filed by the EEOC, in which a male auto body technician of Chinese and Italian ancestry was taunted daily by his foreman with sexual comments, racial stereotypes and code words, including calling him "Bruce Lee." The company also agreed to establish an internal complaint procedure, disseminate an anti-harassment policy, and train its workforce to prevent future harassment. ***EEOC v. Monterey Collision Frame and Auto Body, Inc.*, No. 5:06-cv-06032-JF (N.D. Cal. consent decree filed August 30, 2007).**
- In August 2007, the Commission settled for $44,000 a lawsuit against a California medical clinic, alleging that a White supervisor used racial code words, such as "reggin" ("nigger" spelled backwards), to debase and intimidate an African American file clerk and then fired her after she complained. The clinic also agreed to incorporate a zero-tolerance policy concerning discriminatory harassment and retaliation into its internal EEO and anti-harassment policies. ***EEOC v. Robert G. Aptekar, M.D., d/b/a Arthritis & Orthopedic Medical Clinic*, Civ. No. C06-4808 MHP (N.D. Cal. consent decree filed Aug. 20, 2007).**
- In March 2006, the Commission obtained $562,470 in a Title VII lawsuit against the eighth largest automobile retailer in the U.S. EEOC alleged that shortly after a new White employee was transferred to serve as the new General Manager (GM), he engaged in disparate treatment of the Black employee and made racial remarks to him, such as using "BP time" (Black people time) and remarking that he'd fired "a bunch of you people already." The new GM also berated the personnel coordinator for assisting the Black employee with his complaint and intensified his harassment of him until the employee resigned. The 4-year consent decree prohibits defendants from engaging in future discrimination based on race, color, or national origin. ***EEOC v. Lithia Motors, Inc., d/b/a Lithia Dodge of Cherry Creek,* No. 1:05-cv-01901 (D. Colo. March 8, 2006).**

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5.3.6: Case Study: Delano Regional Medical Center to Pay Nearly $1 Million in EEOC National Origin Discrimination Suit

Filipino-American Hospital Workers Were Singled Out for Harassment and Discrimination, Federal Agency Charged

BAKERSFIELD, Calif. - Delano Regional Medical Center (DRMC), an acute care hospital in California's San Joaquin Valley, will pay $975,000 to settle a lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) and the Asian Pacific American Legal Center (APALC) on behalf of a class of approximately 70 Filipino-American hospital workers. The settlement, announced today, resolves the EEOC's and APALC's charges that the workers endured ongoing harassment and discrimination due to their national origin, stemming from the top levels of hospital management.

Since at least 2006, the Filipino-American hospital workers, mostly nursing staff, alleged that they were the targets of harassing comments, undue scrutiny and discipline particularly when speaking with a Filipino accent or in Filipino languages like Tagalog or Ilocano. Supervisors, staff, and even volunteers were allegedly encouraged to act as vigilantes, constantly berating and reprimanding Filipino-American employees for nearly six years. According to the EEOC, staff constantly made fun of their accents, ordering them to speak English even when they were already speaking in English. Some Filipino-American workers endured humiliating threats of arrest if they did not speak English and were told to go back to the Philippines. In a particularly offensive incident, an employee sprayed air freshener on a claimant's lunch due to the offender's self-professed hatred of Filipino food.

The hostile work environment stemmed from a 2006 meeting in which the chief executive officer and hospital management called only Filipino-American staff to a meeting and threatened them about the consequences of not complying with the hospital's English-only language policy, including the installation of surveillance equipment to monitor their conversations. No other groups were targeted in the meeting. The policy allegedly required employees to speak in English except when speaking to a patient with other language needs or during break time.

Rather than enforcing the policy with all staff, the EEOC asserted that solely Filipino-American staff was disciplined for alleged infractions and constantly monitored for enforcement of the policy. Non-Filipino staff who routinely spoke languages other than English - such as Spanish - on the job were not disciplined or harassed as a result. Ultimately, about 115 Filipino-American workers signed a petition reporting the discrimination and harassment to top-level hospital management. However, hospital management continuously failed to investigate the allegations or take any action to stop it for an extensive period of time thereafter.

The EEOC filed suit against the hospital in August 2010 in U.S. District Court for the Eastern District of California (*EEOC v. Central California Foundation for Health d/b/a Delano Regional Medical Center*, Case No. 10-CV-01492-LJO-JLT). The EEOC argued that this conduct violated Title VII of the Civil Rights Act of 1964. Thereafter, on Jan. 18, 2011, APALC partnered with the EEOC, intervening in the EEOC's lawsuit and bringing forth its own lawsuit on behalf of several more alleged victims.

As part of the settlement announced today, the parties entered into a three-year consent decree requiring DRMC to pay $975,000 in monetary relief, to develop strong protocols for handling harassment and discrimination, and to adopt a language policy that complies with Title VII. The hospital further agreed to hire an EEO monitor to assist Delano to comply with the terms of the agreement; to revise policies and procedures; and, to conduct anti-harassment and anti-discrimination training for all staff with additional training for supervisors. The hospital will submit reports to the EEOC and will post a notice on the matter. The EEOC will monitor compliance with the consent decree.

"Employees should never be targeted because of their national origin or language," said EEOC General Counsel P. David Lopez. "The EEOC stands ready to assist employees nationwide who believe they have suffered workplace discrimination, and to ensure that our workforce reflects the rich diversity of our nation."

The EEOC is working with the White House and other agencies to improve the quality of life and opportunities for Asian-Americans and Pacific Islanders by facilitating increased access to and participation in federal programs where they remain underserved.

Anna Park, regional attorney for the EEOC's Los Angeles District Office, said, "The EEOC continues to see the improper implementation of language policies that contradict the civil rights of employees in the health care industry. All employers should take DRMC's lead and ensure that their language policies do not violate federal law. We commend the Filipino-American workers who came forward, and we encourage other Asian-Americans and Pacific Islanders to do the same if they experience discrimination or retaliation in the workplace."

Plaintiff Wilma Lamug, a licensed vocational nurse who worked at DRMC for more than 10 years, said, "We Filipino nurses loved our jobs and always gave outstanding care to our patients, and it was humiliating to be harassed and singled out. We wanted to be free from discrimination and EEOC and APALC helped us fight for justice. We hope that this case will serve as a model to others. Workers deserve respect as human beings and deserve to be treated fairly."

"DRMC enforced an overly restrictive English-only policy against its Filipino American employees and created a workplace environment that was hostile towards them," said Laboni Hoq, litigation director at APALC. "This landmark settlement should send a strong message to employers that it is illegal to target workers based on their national origin and will hopefully encourage more Asian American and immigrant workers to speak out when their rights are violated. We applaud the EEOC for initiating this case, and for standing with us in fighting for a resolution that not only vindicated our clients' rights but also lays the groundwork for more just language policies in other workplaces."

According to its website, the Delano Regional Medical Center employs over 600 staffers, including over 130 physicians, with about 156 hospital beds in the city of Delano, located about 30 miles north of Bakersfield, Calif.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

5.3.6: Case Study: Delano Regional Medical Center to Pay Nearly $1 Million in EEOC National Origin Discrimination Suit is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

5.3.7: Case Study: EEOC Sues Farmers Insurance for Race Bias in the Firing of Asian-American Claims Representatives

Insurance Giant Also Discharged Caucasian in Retaliation for Providing Testimony During the Discrimination Investigation, Federal Agency Charges

FRESNO, Calif. - Farmers Insurance Exchange violated federal law when it fired two Southeast Asian-American employees due to their race, and then unlawfully fired a third non-Asian employee in retaliation for his participation in the EEOC's investigation, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed today.

Two of the claimants are of Hmong descent and were the only Asian-American employees working at the insurance company's Fresno office at the time of their termination in March 2009. According to the EEOC, a supervisor had instructed staff at the Fresno office to code insurance payments in a manner so as to avoid the automated prompting of customer surveys. A 2009 audit revealed that several of the claims representatives in the Fresno office had instances of improper coding. However, the EEOC contends that only the Asian-American claims representatives at that location were targeted for termination. A claims adjuster, who is Caucasian, actually had a similar number of cases coded, but was not terminated in March 2009—until he provided testimony during the EEOC's investigation into the discrimination charges. This claims adjuster was placed on leave a week after he was interviewed by the EEOC.

Race discrimination and retaliation for complaining about it violate the Title VII of the Civil Rights Act. The EEOC filed its suit against Farmers Insurance Exchange in the U.S. District Court for the Eastern District of California (*EEOC v. Farmers Insurance Exchange*, Case No. 1:13-cv-01574 AWI SKO), after first attempting to reach a pre-litigation settlement through its conciliation process. The EEOC's suit seeks back pay, compensatory and punitive damages for the alleged victims.

"Generally, Asian-Americans and Pacific Islanders seldom come forward to report discrimination," said Anna Park, regional attorney for the EEOC's Los Angeles District, which includes Central California in its jurisdiction. "The EEOC is here to help victims of illegal discrimination and to ensure that employers treat workers equally. Our hope is that more will find the courage to come forward to break the cycle of discrimination at work."

Melissa Barrios, local director of the EEOC's Fresno Local Office, added, "Federal law protects employees who participate in investigations or proceedings involving employment discrimination from retaliation. Workers have the right to provide testimony or protest discrimination without negative employment consequences."

According to its website, Farmers Insurance Exchange is one of the insurers comprising Farmers Insurance Group, one of the largest insurers of vehicles, homes, and small businesses. Farmers Insurance Group serves 10 million households across 50 states with nearly 24,000 employees.

Eliminating discriminatory policies affecting vulnerable workers who may be unaware of their rights under equal employment laws or reluctant or unable to exercise them is one of six national priorities identified by the EEOC's Strategic Enforcement Plan (SEP). These policies can include disparate pay, job segregation, harassment, and human trafficking.

The EEOC is responsible for enforcing federal laws against employment discrimination. Further information is available at www.eeoc.gov.

5.3.7: Case Study: EEOC Sues Farmers Insurance for Race Bias in the Firing of Asian-American Claims Representatives is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

Unit 3: Diversity Groups and Categories: Part B

Chapter 6: European Americans, Native Americans, and Multi-racial Americans

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Chapter 6: European Americans, Native Americans, and Multi-racial Americans is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.1: European Americans

6.1.1: New Worlds in the Americas: Labor, Commerce, and the Columbian Exchange

Learning Objectives

By the end of this section, you will be able to:

1. Describe how Europeans solved their labor problems
2. Describe the theory of mercantilism and the process of commodification
3. Analyze the effects of the Columbian Exchange

European promoters of colonization claimed the Americas overflowed with a wealth of treasures. Burnishing national glory and honor became entwined with carving out colonies, and no nation wanted to be left behind. However, the realities of life in the Americas—violence, exploitation, and particularly the need for workers—were soon driving the practice of slavery and forced labor. Everywhere in America, a stark contrast existed between freedom and slavery. The Columbian Exchange, in which Europeans transported plants, animals, and diseases across the Atlantic in both directions, also left a lasting impression on the Americas.

Labor Systems

Physical power—to work the fields, build villages, process raw materials—is a necessity for maintaining a society. During the sixteenth and seventeenth centuries, humans could derive power only from the wind, water, animals, or other humans. Everywhere in the Americas, a crushing demand for labor bedeviled Europeans because there were not enough colonists to perform the work necessary to keep the colonies going. Spain granted ***encomiendas***—legal rights to native labor—to conquistadors who could prove their service to the crown. This system reflected the Spanish view of colonization: the king rewarded successful conquistadors who expanded the empire. Some native peoples who had sided with the conquistadors, like the Tlaxcalan, also gained *encomiendas*; Malintzin, the Nahua woman who helped Cortés defeat the Mexica, was granted one.

The Spanish believed native peoples would work for them by right of conquest, and, in return, the Spanish would bring them Catholicism. In theory, the relationship consisted of reciprocal obligations, but in practice the Spaniards ruthlessly exploited it, seeing native people as little more than beasts of burden. Convinced of their right to the land and its peoples, they sought both to control native labor and to impose what they viewed as correct religious beliefs upon the land's inhabitants. Native peoples everywhere resisted both the labor obligations and the effort to change their ancient belief systems. Indeed, many retained their religion or incorporated only the parts of Catholicism that made sense to them.

The system of *encomiendas* was accompanied by a great deal of violence. One Spaniard, Bartolomé de Las Casas, denounced the brutality of Spanish rule. A Dominican friar, Las Casas had been one of the earliest Spanish settlers in the Spanish West Indies. In his early life in the Americas, he enslaved Native people and was the recipient of an *encomienda*. However, after

witnessing the savagery with which *encomenderos* (recipients of *encomiendas*) treated the native people, he reversed his views. In 1515, Las Casas released his enslaved natives, gave up his *encomienda*, and began to advocate for humane treatment of native peoples. He lobbied for new legislation, eventually known as the New Laws, which would eliminate slavery and the *encomienda* system.

Figure 6.1.1.1: In this startling image from the Kingsborough Codex (a book written and drawn by native Mesoamericans), a well-dressed Spaniard is shown pulling the hair of a bleeding, severely injured Native. The drawing was part of a complaint about Spanish abuses of their *encomiendas*.

Las Casas's writing about the Spaniards' horrific treatment of Native people helped inspire the so-called **Black Legend**, the idea that the Spanish were bloodthirsty conquerors with no regard for human life. Perhaps not surprisingly, those who held this view of the Spanish were Spain's imperial rivals. English writers and others seized on the idea of Spain's ruthlessness to support their own colonization projects. By demonizing the Spanish, they justified their own efforts as more humane. All European colonizers, however, shared a disregard for Native peoples.

MY STORY

Bartolomé de Las Casas on the Mistreatment of Native Peoples

Bartolomé de Las Casas's *A Short Account of the Destruction of the Indies*, written in 1542 and published ten years later, detailed for Prince Philip II of Spain how Spanish colonists had been mistreating natives.

Into and among these gentle sheep, endowed by their Maker and Creator with all the qualities aforesaid, did creep the Spaniards, who no sooner had knowledge of these people than they became like fierce wolves and tigers and lions who have gone many days without food or nourishment. And no other thing have they done for forty years until this day, and still today see fit to do, but dismember, slay, perturb, afflict, torment, and destroy the Native Americans by all manner of cruelty—new and divers and most singular manners such as never before seen or read or heard of—some few of which shall be recounted below, and they do this to such a degree that on the Island of Hispaniola, of the above three millions souls that we once saw, today there be no more than two hundred of those native people remaining. . . .

Two principal and general customs have been employed by those, calling themselves Christians, who have passed this way, in extirpating and striking from the face of the earth those suffering nations. The first being unjust, cruel, bloody, and tyrannical warfare. The other—after having slain all those who might yearn toward or suspire after or think of freedom, or consider escaping from the torments that they are made to suffer, by which I mean all the native-born lords and adult males, for it is the Spaniards' custom in their wars to allow only young boys and females to live—being to oppress them with the hardest, harshest, and most heinous bondage to which men or beasts might ever be bound into.

How might these writings have been used to promote the "black legend" against Spain as well as subsequent English exploration and colonization?

Native peoples were not the only source of cheap labor in the Americas; by the middle of the sixteenth century, Africans formed an important element of the labor landscape, producing the cash crops of sugar and tobacco for European markets. Europeans viewed Africans as non-Christians, which they used as a justification for enslavement. Denied control over their lives, enslaved people endured horrendous conditions. At every opportunity, they resisted enslavement, and their resistance was met with violence. Indeed, physical, mental, and sexual violence formed a key strategy among European slaveholders in their effort to assert mastery and impose their will. The Portuguese led the way in the evolving transport of captive enslaved people across the Atlantic; slave "factories" on the west coast of Africa, like Elmina Castle in Ghana, served as holding pens for enslaved people brought from Africa's interior. In time, other European imperial powers would follow in the footsteps of the Portuguese by constructing similar outposts on the coast of West Africa.

The Portuguese traded or sold enslaved people to Spanish, Dutch, and English colonists in the Americas, particularly in South America and the Caribbean, where sugar was a primary export. Thousands of enslaved Africans found themselves growing, harvesting, and processing **sugarcane** in an arduous routine of physical labor. Enslaved people had to cut the long cane stalks by hand and then bring them to a mill, where the cane juice was extracted. They boiled the extracted cane juice down to a brown, crystalline sugar, which then had to be cured in special curing houses to have the molasses drained from it. The result was refined sugar, while the leftover molasses could be distilled into rum. Every step was labor-intensive and often dangerous.

Las Casas estimated that by 1550, there were fifty thousand enslaved people on Hispaniola. However, it is a mistake to assume that during the very early years of European exploration all Africans came to America as captives; some were free men who took part in expeditions, for example, serving as conquistadors alongside Cortés in his assault on Tenochtitlán. Nonetheless, African slavery was one of the most tragic outcomes in the emerging Atlantic World.

CLICK AND EXPLORE

Browse the PBS collection Africans in America: Part 1 (https://www.pbs.org/wgbh/aia/part1/title.html) to see information and primary sources for the period 1450 through 1750.

Commerce in the New World

The economic philosophy of **mercantilism** shaped European perceptions of wealth from the 1500s to the late 1700s. Mercantilism held that only a limited amount of wealth, as measured in gold and silver bullion, existed in the world. In order to gain power, nations had to amass wealth by mining these precious raw materials from their colonial possessions. During the age of European exploration, nations employed conquest, colonization, and trade as ways to increase their share of the bounty of the New World. Mercantilists did not believe in free trade, arguing instead that the nation should control trade to create wealth. In this view, colonies existed to strengthen the colonizing nation. Mercantilists argued against allowing their nations to trade freely with other nations.

Spain's mercantilist ideas guided its economic policy. Every year, enslaved laborers or native workers loaded shipments of gold and silver aboard Spanish treasure fleets that sailed from Cuba for Spain. These ships groaned under the sheer weight of bullion, for the Spanish had found huge caches of silver and gold in the New World. In South America, for example, Spaniards discovered rich veins of silver ore in the mountain called Potosí and founded a settlement of the same name there. Throughout the sixteenth century, Potosí was a boomtown, attracting settlers from many nations as well as native people from many different cultures.

Colonial mercantilism, which was basically a set of protectionist policies designed to benefit the nation, relied on several factors: colonies rich in raw materials, cheap labor, colonial loyalty to the home government, and control of the shipping trade. Under this system, the colonies sent their raw materials, harvested by enslaved laborers or native workers, back to their mother country. The mother country sent back finished materials of all sorts: textiles, tools, clothing. The colonists could purchase these goods *only* from their mother country; trade with other countries was forbidden.

The 1500s and early 1600s also introduced the process of **commodification** to the New World. American silver, tobacco, and other items, which were used by native peoples for ritual purposes, became European commodities with a monetary value that could be bought and sold. Before the arrival of the Spanish, for example, the Inca people of the Andes consumed *chicha*, a corn beer, for ritual purposes only. When the Spanish discovered chicha, they bought and traded for it, turning it into a commodity instead of a ritual substance. Commodification thus recast native

economies and spurred the process of early commercial capitalism. New World resources, from plants to animal pelts, held the promise of wealth for European imperial powers.

The Columbian Exchange

As Europeans traversed the Atlantic, they brought with them plants, animals, and diseases that changed lives and landscapes on both sides of the ocean. These two-way exchanges between the Americas and Europe/Africa are known collectively as the **Columbian Exchange**.

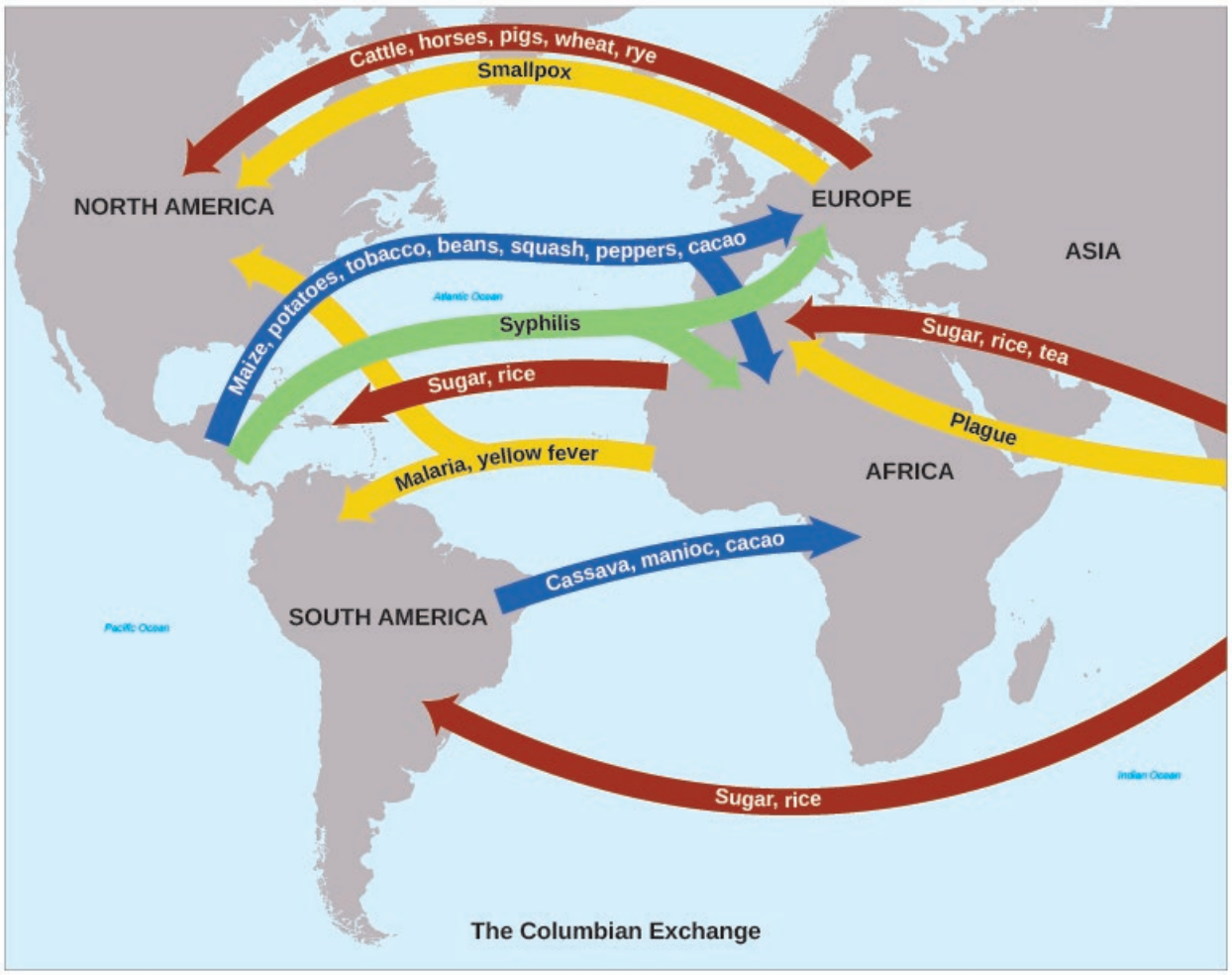

Figure 6.1.1.2: With European exploration and settlement of the New World, goods and diseases began crossing the Atlantic Ocean in both directions. This "Columbian Exchange" soon had global implications.

Of all the commodities in the Atlantic World, sugar proved to be the most important. Indeed, sugar carried the same economic importance as oil does today. European rivals raced to create sugar plantations in the Americas and fought wars for control of some of the best sugar production areas. Although refined sugar was available in the Old World, Europe's harsher climate made sugarcane difficult to grow, and it was not plentiful. Columbus brought sugar to

Hispaniola in 1493, and the new crop was growing there by the end of the 1490s. By the first decades of the 1500s, the Spanish were building sugar mills on the island. Over the next century of colonization, Caribbean islands and most other tropical areas became centers of sugar production.

Though of secondary importance to sugar, tobacco achieved great value for Europeans as a cash crop as well. Native peoples had been growing it for medicinal and ritual purposes for centuries before European contact, smoking it in pipes or powdering it to use as snuff. They believed tobacco could improve concentration and enhance wisdom. To some, its use meant achieving an entranced, altered, or divine state; entering a spiritual place.

Tobacco was unknown in Europe before 1492, and it carried a negative stigma at first. The early Spanish explorers considered natives' use of tobacco to be proof of their savagery and, because of the fire and smoke produced in the consumption of tobacco, evidence of the Devil's sway in the New World. Gradually, however, European colonists became accustomed to and even took up the habit of smoking, and they brought it across the Atlantic. As did the Native Americans, Europeans ascribed medicinal properties to tobacco, claiming that it could cure headaches and skin irritations. Even so, Europeans did not import tobacco in great quantities until the 1590s. At that time, it became the first truly global commodity; English, French, Dutch, Spanish, and Portuguese colonists all grew it for the world market.

Native peoples also introduced Europeans to chocolate, made from cacao seeds and used by the Aztec in Mesoamerica as currency. Mesoamerican Natives consumed unsweetened chocolate in a drink with chili peppers, vanilla, and a spice called achiote. This chocolate drink—*xocolatl*—was part of ritual ceremonies like marriage and an everyday item for those who could afford it. Chocolate contains theobromine, a stimulant, which may be why native people believed it brought them closer to the sacred world.

Spaniards in the New World considered drinking chocolate a vile practice; one called chocolate "the Devil's vomit." In time, however, they introduced the beverage to Spain. At first, chocolate was available only in the Spanish court, where the elite mixed it with sugar and other spices. Later, as its availability spread, chocolate gained a reputation as a love potion.

CLICK AND EXPLORE

Visit Nature Transformed (http://nationalhumanitiescenter.org/tserve/nattrans/nattrans.htm) for a collection of scholarly essays on the environment in American history.

The crossing of the Atlantic by plants like cacao and tobacco illustrates the ways in which the discovery of the New World changed the habits and behaviors of Europeans. Europeans changed the New World in turn, not least by bringing Old World animals to the Americas. On his second voyage, Christopher Columbus brought pigs, horses, cows, and chickens to the islands of the Caribbean. Later explorers followed suit, introducing new animals or reintroducing ones that had died out (like horses). With less vulnerability to disease, these animals often fared better than humans in their new home, thriving both in the wild and in domestication.

Europeans encountered New World animals as well. Because European Christians understood the world as a place of warfare between God and Satan, many believed the Americas, which lacked Christianity, were home to the Devil and his minions. The exotic, sometimes bizarre, appearances and habits of animals in the Americas that were previously unknown to Europeans, such as manatees, sloths, and poisonous snakes, confirmed this association. Over time, however, they began to rely more on observation of the natural world than solely on scripture. This shift—from seeing the Bible as the source of all received wisdom to trusting observation or empiricism—is one of the major outcomes of the era of early globalization.

Travelers between the Americas, Africa, and Europe also included microbes: silent, invisible life forms that had profound and devastating consequences. Native peoples had no immunity to diseases from across the Atlantic, to which they had never been exposed. European explorers unwittingly brought with them chickenpox, measles, mumps, and **smallpox**, which ravaged native peoples despite their attempts to treat the diseases, decimating some populations and wholly destroying others.

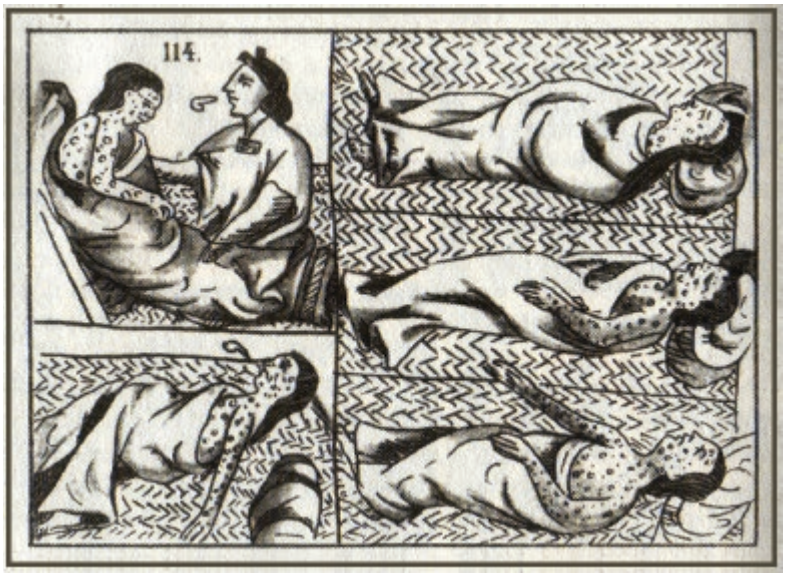

Figure 6.1.1.3: This sixteenth-century Aztec drawing shows the suffering of a typical victim of smallpox. Smallpox and other contagious diseases brought by European explorers decimated Native populations in the Americas.

In eastern North America, some native peoples interpreted death from disease as a hostile act. Some groups, including the Iroquois, engaged in raids or "**mourning wars**," taking enemy prisoners in order to assuage their grief and replace the departed. In a special ritual, the prisoners were "requickened"—assigned the identity of a dead person—and adopted by the bereaved family to take the place of their dead. As the toll from disease rose, mourning wars intensified and expanded.

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6.1.2: The Impact of Colonization

Learning Objectives

By the end of this section, you will be able to:

1. Explain the reasons for the rise of slavery in the American colonies
2. Describe changes to Native life, including warfare and hunting
3. Contrast European and Native American views on property
4. Assess the impact of European settlement on the environment

As Europeans moved beyond exploration and into colonization of the Americas, they brought changes to virtually every aspect of the land and its people, from trade and hunting to warfare and personal property. European goods, ideas, and diseases shaped the changing continent.

As Europeans established their colonies, their societies also became segmented and divided along religious and racial lines. Most people in these societies were not free; they labored as servants or enslaved people, doing the work required to produce wealth for others. By 1700, the American continent had become a place of stark contrasts between slavery and freedom, between the haves and the have-nots.

The Institution of Slavery

Everywhere in the American colonies, a crushing demand for labor existed to grow New World cash crops, especially sugar and tobacco. This need led Europeans to rely increasingly on Africans, and after 1600, the movement of Africans across the Atlantic accelerated. The English crown chartered the Royal African Company in 1672, giving the company a monopoly over the transport of enslaved African people to the English colonies. Over the next four decades, the company transported around 350,000 Africans from their homelands. By 1700, the tiny English sugar island of Barbados had a population of fifty thousand enslaved people, and the English had encoded the institution of chattel slavery into colonial law.

This new system of African slavery came slowly to the English colonists, who did not have slavery at home and preferred to use servant labor. Nevertheless, by the end of the seventeenth century, the English everywhere in America—and particularly in the Chesapeake Bay colonies—had come to rely on enslaved Africans. While Africans had long practiced slavery among their own people, it had not been based on race. Africans enslaved other Africans as war captives, for crimes, and to settle debts; they generally used enslaved people for domestic and small-scale agricultural work, not for growing cash crops on large plantations. Additionally, African slavery was often a temporary condition rather than a lifelong sentence, and, unlike New World slavery, it was typically not heritable (passed from an enslaved mother to her children).

The growing slave trade with Europeans had a profound impact on the people of West Africa, giving prominence to local chieftains and merchants who traded enslaved people for European textiles, alcohol, guns, tobacco, and food. Africans also charged Europeans for the right to trade in enslaved people and imposed taxes on enslaved people purchases. Different African groups

and kingdoms even staged large-scale raids on each other to meet the demand for enslaved people.

Once sold to traders, all captured people sent to America endured the hellish **Middle Passage**, the transatlantic crossing, which took one to two months. By 1625, more than 325,800 Africans had been shipped to the New World, though many thousands perished during the voyage. An astonishing number, some four million, were transported to the Caribbean between 1501 and 1830. When they reached their destination in America, Africans found themselves trapped in shockingly brutal slave societies. In the Chesapeake colonies, they faced a lifetime of harvesting and processing tobacco.

Everywhere, Africans resisted slavery, and running away was common. In Jamaica and elsewhere, escaped enslaved people created **maroon communities**, groups that resisted recapture and eked out a living from the land, rebuilding their communities as best they could. When possible, they adhered to traditional ways, following spiritual leaders such as Vodun priests.

Changes to Native Life

While the Americas remained firmly under the control of native peoples in the first decades of European settlement, conflict increased as colonization spread and Europeans placed greater demands upon the native populations, including expecting them to convert to Christianity (either Catholicism or Protestantism). Throughout the seventeenth century, the still-powerful native peoples and confederacies that retained control of the land waged war against the invading Europeans, achieving a degree of success in their effort to drive the newcomers from the continent.

At the same time, European goods had begun to change Native life radically. In the 1500s, some of the earliest objects Europeans introduced to Native Americans were glass beads, copper kettles, and metal utensils. Native people often adapted these items for their own use. For example, some cut up copper kettles and refashioned the metal for other uses, including jewelry that conferred status on the wearer, who was seen as connected to the new European source of raw materials.

As European settlements grew throughout the 1600s, European goods flooded Native communities. Soon Native people were using these items for the same purposes as the Europeans. For example, many Native inhabitants abandoned their animal-skin clothing in favor of European textiles. Similarly, clay cookware gave way to metal cooking implements, and Native Americans found that European flint and steel made starting fires much easier.

Figure \(\PageIndex{1}\): In this 1681 portrait, the Niantic-Narragansett leader Ninigret wears a combination of European and Native American goods. Which elements of each culture are evident in this portrait?

The abundance of European goods gave rise to new artistic objects. For example, iron awls made the creation of shell beads among the native people of the Eastern Woodlands much easier, and the result was an astonishing increase in the production of **wampum**, shell beads used in ceremonies and as jewelry and currency. Native peoples had always placed goods in the graves of their departed, and this practice escalated with the arrival of European goods. Archaeologists have found enormous caches of European trade goods in the graves of Native Americans on the East Coast.

Native weapons changed dramatically as well, creating an arms race among the peoples living in European colonization zones. Native Americans refashioned European brassware into arrow points and turned axes used for chopping wood into weapons. The most prized piece of European weaponry to obtain was a **musket**, or light, long-barreled European gun. In order to trade with Europeans for these, Native peoples intensified their harvesting of beaver, commercializing their traditional practice.

The influx of European materials made warfare more lethal and changed traditional patterns of authority among tribes. Formerly weaker groups, if they had access to European metal and weapons, suddenly gained the upper hand against once-dominant groups. The Algonquian, for instance, traded with the French for muskets and gained power against their enemies, the Iroquois. Eventually, native peoples also used their new weapons against the European colonizers who had provided them.

CLICK AND EXPLORE

Explore the complexity of Native-European relationships (http://nationalhumanitiescenter.org/pds/amerbegin/power/text6/text6read.htm) in the series of primary source documents on the National Humanities Center site.

ENVIRONMENTAL CHANGES

The European presence in America spurred countless changes in the environment, setting into motion chains of events that affected native animals as well as people. The popularity of beaver-trimmed hats in Europe, coupled with Native Americans' desire for European weapons, led to the overhunting of beaver in the Northeast. Soon, beavers were extinct in New England, New York, and other areas. With their loss came the loss of beaver ponds, which had served as habitats for fish as well as water sources for deer, moose, and other animals. Furthermore, Europeans introduced pigs, which they allowed to forage in forests and other wildlands. Pigs consumed the foods on which deer and other indigenous species depended, resulting in scarcity of the game native peoples had traditionally hunted.

European ideas about owning land as private property clashed with natives' understanding of land use. Native peoples did not believe in private ownership of land; instead, they viewed land as a resource to be held in common for the benefit of the group. The European idea of usufruct—the right to common land use and enjoyment—comes close to the native understanding, but colonists did not practice usufruct widely in America. Colonizers established fields, fences, and other means of demarcating private property. Native peoples who moved seasonally to take advantage of natural resources now found areas off-limits, claimed by colonizers because of their insistence on private-property rights.

The Introduction of Disease

Perhaps European colonization's single greatest impact on the North American environment was the introduction of disease. Microbes to which native inhabitants had no immunity led to death everywhere Europeans settled. Along the New England coast between 1616 and 1618, epidemics claimed the lives of 75 percent of the native people. In the 1630s, half the Huron and Iroquois around the Great Lakes died of smallpox. As is often the case with disease, the very young and the very old were the most vulnerable and had the highest mortality rates. The loss of the older generation meant the loss of knowledge and tradition, while the death of children only compounded the trauma, creating devastating implications for future generations.

Some native peoples perceived disease as a weapon used by hostile spiritual forces, and they went to war to exorcise the disease from their midst. These "mourning wars" in eastern North America were designed to gain captives who would either be adopted ("requickened" as a replacement for a deceased loved one) or ritually tortured and executed to assuage the anger and grief caused by loss.

The Cultivation of Plants

European expansion in the Americas led to an unprecedented movement of plants across the Atlantic. A prime example is tobacco, which became a valuable export as the habit of smoking,

previously unknown in Europe, took hold. Another example is sugar. Columbus brought sugarcane to the Caribbean on his second voyage in 1494, and thereafter a wide variety of other herbs, flowers, seeds, and roots made the transatlantic voyage.

Figure \(\PageIndex{2}\): Adriaen van Ostade, a Dutch artist, painted *An Apothecary Smoking in an Interior* in 1646. The large European market for American tobacco strongly influenced the development of some of the American colonies.

Just as pharmaceutical companies today scour the natural world for new drugs, Europeans traveled to America to discover new medicines. The task of cataloging the new plants found there helped give birth to the science of botany. Early botanists included the English naturalist Sir Hans Sloane, who traveled to Jamaica in 1687 and there recorded hundreds of new plants. Sloane also helped popularize the drinking of chocolate, made from the cacao bean, in England.

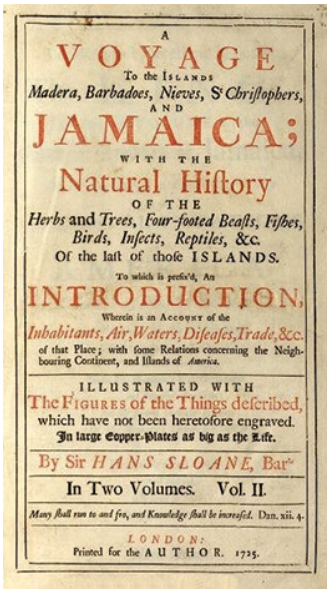

A
VOYAGE
To the ISLANDS
Madera, Barbadoes, Nieves, S^t Chriſtophers,
AND
JAMAICA;
WITH THE
Natural Hiſtory
OF THE
Herbs and *Trees, Four-footed Beaſts, Fiſhes, Birds, Inſects, Reptiles,* &c.
Of the laſt of thoſe ISLANDS.
To which is prefix'd, An
INTRODUCTION,
Wherein is an Account of the
Inhabitants, Air, Waters, Diſeaſes, Trade, &c.
of that Place; with ſome Relations concerning the Neighbouring Continent, and Illands of *America.*
ILLUSTRATED WITH
The FIGURES of the Things deſcribed,
which have not been heretofore engraved.
In large Copper-Plates as big as the Life.
By Sir *HANS SLOANE,* Bar^t
In Two Volumes. Vol. II.
Many ſhall run to and fro, and Knowledge ſhall be increaſed. Dan. xii. 4.
LONDON:
Printed for the AUTHOR. 1725.

Figure \(\PageIndex{3}\): English naturalist Sir Hans Sloane traveled to Jamaica and other Caribbean islands to catalog the flora of the new world.

Native Americans, who possessed a vast understanding of local New World plants and their properties, would have been a rich source of information for those European botanists seeking to find and catalog potentially useful plants. Enslaved Africans, who had a tradition of the use of medicinal plants in their native land, adapted to their new surroundings by learning the use of New World plants through experimentation or from the native inhabitants. Native peoples and Africans employed their knowledge effectively within their own communities. One notable example was the use of the peacock flower to induce abortions: Native American and enslaved African women living in oppressive colonial regimes are said to have used this herb to prevent the birth of children into slavery. Europeans distrusted medical knowledge that came from African or native sources, however, and thus lost the benefit of this source of information.

6.1.2: The Impact of Colonization is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.1.3: Video: The Lie That Invented Racism

To understand and eradicate racist thinking, start at the beginning. That's what journalist and documentarian John Biewen did, leading to a trove of surprising and thought-provoking information on the "origins" of race. He shares his findings, supplying answers to fundamental questions about racism—and lays out an exemplary path for practicing effective allyship.

https://www.youtube.com/watch?v=oIZDtqWX6Fk

6.1.3: Video: The Lie That Invented Racism is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.1.4: Case Study: EEOC Sues T.M.F Mooresville for Racial Harassment and Constructive Discharge at Hampton Inn

Employer Allowed Black Housekeeper to Racially Harass White Coworkers, Federal Agency Charges

MOORESVILLE, N.C. – T.M.F. Mooresville, LLC, operating as Hampton Inn & Suites in Mooresville, North Carolina, subjected white housekeeping employees to harassment and a hostile work environment based on their race, the U.S. Equal Employment Opportunity Commission (EEOC) alleged in a lawsuit filed today.

According to the EEOC's complaint, from at least April 2017 through approximately October 2018, an African American housekeeper employed by the company created a racially hostile work environment for Caucasian housekeeping employees, including Rhonda Kendrick, Jennifer Sipes, and Candice Sanders. An African American housekeeper referred to the white employees in racially derogatory terms, routinely chastised them, and interfered with their ability to perform their jobs.

The Caucasian employees reported the racial harassment to the company on multiple occasions, but instead of taking action to remedy the hostile conduct, the employer allowed the harassment to continue and escalate. In August 2018, Kendrick was forced to quit her job as a result of the racially hostile work environment.

Title VII of the Civil Rights Act of 1964 protects employees from race discrimination and harassment in the workplace. The EEOC filed suit in the U.S. District Court for the Western District of North Carolina (Equal Employment Opportunity Commission v. T.M.F Mooresville, LLC, Civil Action No.: 3:21-cv-00446) after first attempting to reach a pre-litigation settlement through its voluntary conciliation process. The EEOC seeks monetary relief for the three white employees, including compensatory and punitive damages. The EEOC also seeks injunctive relief against the company to end any ongoing harassment or hostility based on race and to take steps to prevent such unlawful conduct in the future.

"An employer violates federal law when it fails to take action to remedy race-based harassment in the workplace," said Melinda Dugas, regional attorney for the EEOC's Charlotte District. "Title VII protects employees of all races and guarantees them the right to work in an environment that is free from racial harassment and hostility. Employers who are aware of such conduct have a legal and moral obligation to take action to eliminate it."

EEOC District Director Thomas Colclough said, "All employees deserve and should expect a workplace that is free of racial harassment. The EEOC will continue to stand watch and demand that all types of unlawful harassment are eradicated from the workplace."

The EEOC's Charlotte District Office has jurisdiction over North Carolina, parts of South Carolina, and parts of Virginia.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

6.1.4: Case Study: EEOC Sues T.M.F Mooresville for Racial Harassment and Constructive Discharge at Hampton Inn is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.1.5: Case Study: UPS to Pay $4.9 Million to Settle EEOC Religious Discrimination Suit

Package Delivery Giant Discriminated Against Class of Applicants and Employees Whose Religion Conflicted with the Company's Uniform and Appearance Policy, Federal Agency Charged

NEW YORK - United Parcel Service, Inc., the world's largest package delivery company, will pay $4.9 million and provide other relief to settle a class religious discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The suit was resolved by a five-year consent decree entered by Judge Margo K. Brodie on December 21, 2018, on the eve of the government shutdown. The EEOC reopened today.

UPS prohibits male employees in supervisory or customer contact positions, including delivery drivers, from wearing beards or growing their hair below collar length. The EEOC alleged that since at least January 1, 2005, UPS failed to hire or promote individuals whose religious practices conflict with its appearance policy and failed to provide religious accommodations to its appearance policy at facilities throughout the United States. The EEOC further alleged that UPS segregated employees who maintained beards or long hair in accordance with their religious beliefs into non-supervisory, back-of-the-facility positions without customer contact.

All this alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating against individuals because of their religion and requires employers to reasonably accommodate an employee's religious beliefs unless doing so would impose an undue hardship on the employer. EEOC filed its lawsuit (*EEOC v. United Parcel Service, Inc.*, Civil Action No. 1:15-cv-04141) on July 15, 2015 in the U.S. District Court for the Eastern District of New York after first attempting to reach a pre-litigation settlement through its conciliation process.

"For far too long, applicants and employees at UPS have been forced to choose between violating their religious beliefs and advancing their careers at UPS," said Jeffrey Burstein, regional attorney for the EEOC's New York District Office. "The EEOC filed this suit to end that longstanding practice at UPS, and we are extremely pleased with the result."

Under the terms of the decree, UPS will pay $4.9 million to a class of current and former applicants and employees identified by the EEOC. In addition to the monetary relief, UPS will amend its religious accommodation process for applicants and employees, provide nationwide training to managers, supervisors, and human resources personnel, and publicize the availability of religious accommodations on its internal and external websites. UPS also agreed to provide the EEOC with periodic reports of requests for religious accommodation related to the appearance policy to enable the EEOC to monitor the effectiveness of the decree's provisions.

Kevin Berry, director of the EEOC's New York District Office, said, "Federal law requires employers to make exceptions to their appearance policies to allow applicants and employees to observe religious dress and grooming practices."

Elizabeth Fox-Solomon, the EEOC's lead trial attorney for the case, said, "UPS's strict appearance policy has operated to exclude Muslims, Sikhs, Rastafarians, and other religious groups from equal participation and advancement in the workforce for many years. We appreciate UPS's willingness to make real changes to its religious accommodation process to ensure equal opportunity for people of all backgrounds."

Individuals who believe they may have been denied a position at UPS or otherwise discriminated against by UPS because of a religious conflict with the appearance policy should contact the EEOC toll-free at 1-833-727-6581, or by e-mail at ups-religion.lawsuit@eeoc.gov.

The EEOC's New York District Office is responsible for processing discrimination charges, administrative enforcement, and the conduct of agency litigation in Connecticut, Maine, Massachusetts, New Hampshire, New York, northern New Jersey, Rhode Island, and Vermont. The Buffalo Local Office conducted the investigation resulting in this lawsuit.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

6.1.5: Case Study: UPS to Pay $4.9 Million to Settle EEOC Religious Discrimination Suit is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.1.6: Video: What If White People Led the Charge to End Racism?

Diversity fatigue is real: people of color are tired of leading the fight. White allies are tired of being told they're doing it wrong. No wonder we don't have equity yet! In this inspiring talk, Nita Mosby Tyler explains why we need "unlikely allies" in the fight for justice, and why people who are experiencing inequality firsthand must be willing to accept the help.

https://www.youtube.com/watch?v=VQSW5SFBsOg

6.1.6: Video: What If White People Led the Charge to End Racism? is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.2: Native Americans

6.2: Native Americans is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.2.1: Native Americans in the United States

At one time, all of the current territory was occupied by Native Americans. Due to the influence of disease, **genocidal** wars, and poverty they have been reduced to roughly 2 percent of the overall population of the United States. Some live on reservations, but most do not.

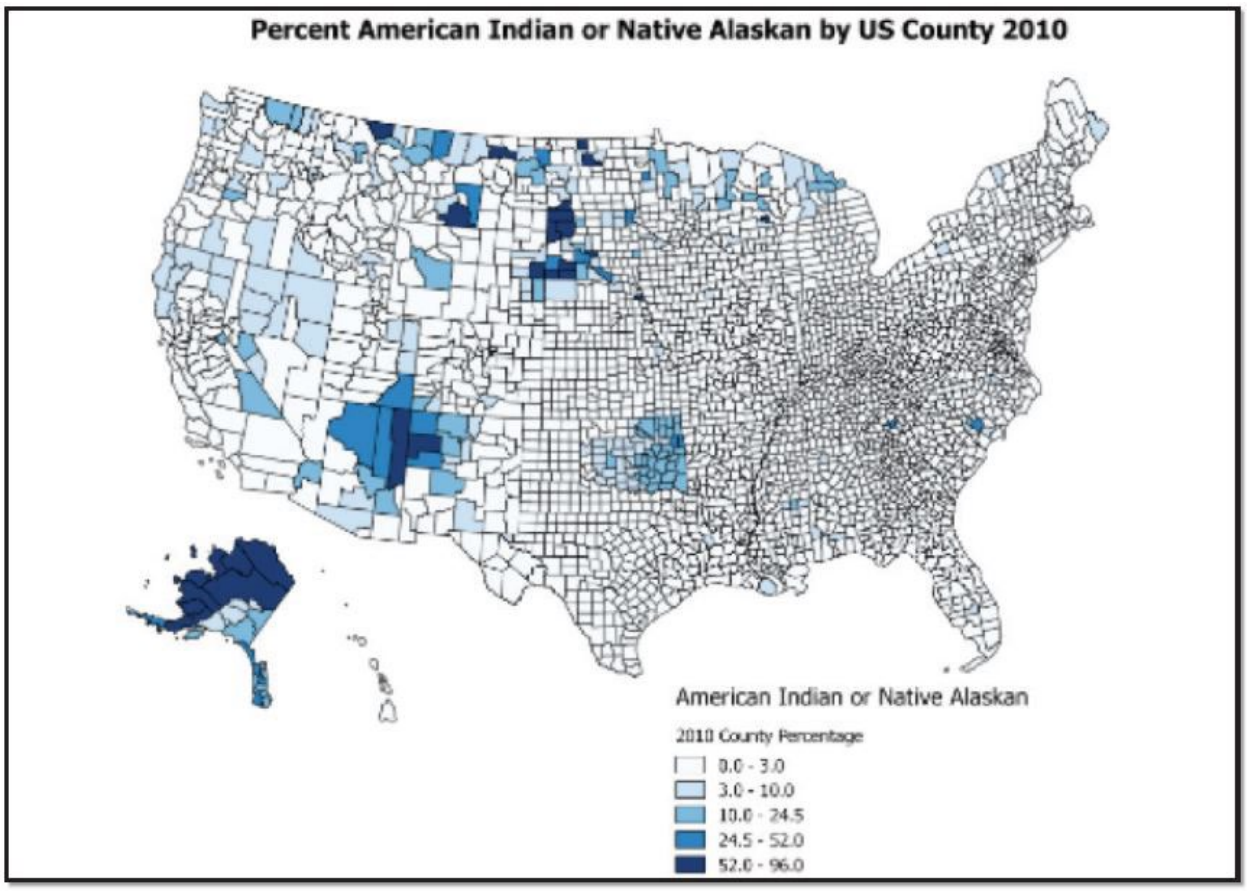

Percent American Indian or Native Alaskan by US County 2010
American Indian or Native Alaskan
2010 County Percentage
0.0 - 3.0
3.0 - 10.0
10.0 - 24.5
24.5 - 52.0
52.0 - 96.0

Figure 6.2.1.1: The Distribution of the American Indian Population. Original work by David Dorrell is licensed under CC BY SA 4.0.

6.2.1: Native Americans in the United States is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.2.2: Video: Honoring Indigenous Cultures and Histories

What happens to human beings when their culture and history are systematically erased? In this powerful account, psychology PhD candidate Jill Fish tells her story growing up as a Tuscarora woman in a world that fails to accurately acknowledge indigenous peoples' cultures and histories. Integrating psychological theory and research with her personal and collective stories as a Tuscarora woman, Fish demonstrates the critical need to pay attention to the role culture and history plays in the present-day lives of indigenous peoples through her model of human development—forcing individuals to see the legacy of settler colonialism and challenging them to do something about it.

https://www.youtube.com/watch?v=6VL_6f0G8ow

6.2.2: Video: Honoring Indigenous Cultures and Histories is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.2.3: Video: Native American Culture - Language: The Key to Everything

One of the most significant losses to the Native American culture is the loss of the indigenous language. This talk addresses the need to revitalize the Menominee Native American language. NOTE: The opening and closing moments of this talk are spoken in the endangered Menominee language, currently understood by only a few dozen people worldwide.

https://www.youtube.com/watch?v=KSYRajT3a0E

6.2.3: Video: Native American Culture - Language: The Key to Everything is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.2.4: Case Study: EEOC Sues Arizona Diner For National Origin Bias Against Navajos and Other Native Americans

PHOENIX - The U.S. Equal Employment Opportunity Commission (EEOC) announced that it filed a national origin discrimination lawsuit under Title VII of the Civil Rights Act of 1964 on behalf of Native American employees who were subjected to an unlawful English-only policy precluding them from speaking Navajo in the workplace and terminating them for refusing to sign an agreement to abide by the restrictive language policy. The lawsuit, the first-ever English-only suit by the Commission on behalf of Native Americans, was filed by the EEOC's Phoenix District Office against RD's Drive-In, a diner located in Page, Arizona - a community adjacent to the Navajo reservation.

Reiterating a message she delivered last June to the 25th Anniversary Conference of the Council for Tribal Employment Rights - whose members represent the employment interest of Indian tribes on reservations in several states - EEOC Chair Cari M. Dominguez said: "The Commission is committed to advancing job opportunities and protecting the employment rights of Native Americans."

The suit, *EEOC v RD's Drive In*, CIV 02 1911 PHX LOA, states that in approximately June 2000, RD's posted a policy stating: "*The owner of this business can speak and understand only English. While the owner is paying you as an employee, you are required to use English at all times. The only exception is when the customer can not understand English. If you feel unable to comply with this requirement, you may find another job*."

This policy, in an early form, prohibited employees from speaking "Navajo" in the workplace. Two employees, Roxanne Cahoon and Freda Douglas, refused to agree to the policy because they believed it to be discriminatory. As a result, they were asked to leave their employment by RD's. In addition, at least two other employees resigned prior to being terminated because they could not agree to the policy. The vast majority of the employees working at the time spoke Navajo.

Charles Burtner, Director of the EEOC's Phoenix District Office, said: "We investigated this case. We found that the policy at issue, by its own terms, extended to breaks and appeared to be directed primarily to the use of the Navajo language. We found that this policy and its implementation is a form of national origin discrimination, which violates Title VII. Further, the employer's decision to terminate employees who questioned the policy is particularly troubling. Again, we found these terminations to be a form of retaliation, which is illegal."

Mary O'Neill, Acting Regional Attorney of the Phoenix District Office, said: "This case represents a rare lawsuit by the EEOC challenging workplace language restrictions directed at native languages. It is amazing that, in a country that cherishes diversity, an employer will prohibit the use of indigenous languages in the workplace and terminate Native American employees who question whether that is lawful. In fact, in 1990, Congress enacted a statute specifically designed to protect and preserve Native languages."

The lawsuit seeks monetary relief, including back pay with prejudgment interest and compensatory and punitive damages. The Commission is also seeking an injunction prohibiting future discrimination and any other curative relief to prevent the company from engaging in any further discriminatory practices. The EEOC filed suit only after investigating the case, finding that discrimination took place, and exhausting its conciliation efforts to reach a voluntary settlement.

In addition to enforcing Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on sex, race, color, religion, or national origin, the Commission enforces Title I of the Americans with Disabilities Act, which prohibits discrimination against people with disabilities in the private sector; the Age Discrimination in Employment Act of 1967; the Equal Pay Act of 1963; the Civil Rights Act of 1991; and the provisions of the Rehabilitation Act of 1973 which prohibit discrimination affecting people with disabilities in the federal sector. Further information about the Commission is available on the Agency's website at www.eeoc.gov.

6.2.4: Case Study: EEOC Sues Arizona Diner For National Origin Bias Against Navajos and Other Native Americans is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.3: Multi-racial Americans

6.3: Multi-racial Americans is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.3.1: 2020 Census Illuminates Racial and Ethnic Composition of the Country

BACKGROUND

The 2020 Census used the required two separate questions (one for Hispanic or Latino origin and one for race) to collect the races and ethnicities of the U.S. population — following the standards set by the U.S. Office of Management and Budget (OMB) in 1997.

Building upon our research over the past decade, we improved the two separate questions design and updated our data processing and coding procedures for the 2020 Census.

This work began in 2015 with our research and testing centered on findings from our 2015 National Content Test and the designs were implemented in the 2018 Census Test.

The improvements and changes enabled a more thorough and accurate depiction of how people self-identify, yielding a more accurate portrait of how people report their Hispanic origin and race within the context of a two-question format.

These changes reveal that the U.S. population is much more multiracial and more diverse than what we measured in the past.

We are confident that differences in the overall racial distributions are largely due to improvements in the design of the two separate questions for race data collection and processing as well as some demographic changes over the past 10 years.

We are also confident, as shown in our research over the past decade, that using a single combined question for race and ethnicity in the decennial census would ultimately yield an even more accurate portrait of how the U.S. population self-identifies, especially for people who self-identify as multiracial or multiethnic.

Today's release of 2020 Census redistricting data provides a new snapshot of the racial and ethnic composition of the country as a result of improvements in the design of the race and ethnicity questions, processing, and coding.

Nearly all groups saw population gains this decade and the increase in the Two or More Races population (referred to throughout this story as the Multiracial population) was especially large (up 276%). The White alone population declined by 8.6% since 2010.

The 2020 Census shows (Figures 1, 2, and 3):

- The White population remained the largest race or ethnicity group in the United States, with 204.3 million people identifying as White alone. Overall, 235.4 million people reported White alone or in combination with another group. However, the White alone population decreased by 8.6% since 2010.
- The Multiracial population has changed considerably since 2010. It was measured at 9 million people in 2010 and is now 33.8 million people in 2020, a 276% increase.

- The "in combination" multiracial populations for all race groups accounted for most of the overall changes in each racial category.
- All of the race alone or in combination groups experienced increases. The Some Other Race alone or in combination group (49.9 million) increased 129% surpassing the Black or African American population (46.9 million) as the second-largest race alone or in combination group.
- The next largest racial populations were the Asian alone or in combination group (24 million), the American Indian and Alaska Native alone or in combination group (9.7 million), and the Native Hawaiian and Other Pacific Islander alone or in combination group (1.6 million).
- The Hispanic or Latino population, which includes people of any race, was 62.1 million in 2020. The Hispanic or Latino population grew 23%, while the population that was not of Hispanic or Latino origin grew 4.3% since 2010.

It is important to note that these data comparisons between the 2020 Census and 2010 Census race data should be made with caution, taking into account the improvements we have made to the Hispanic origin and race questions and the ways we code what people tell us.

Nearly all groups saw population gains this decade and the increase in the Two or More Races population (referred to throughout this story as the Multiracial population) was especially large (up 276%). The White alone population declined by 8.6% since 2010.

Accordingly, data from the 2020 Census show different but reasonable and expected distributions from the 2010 Census for the White alone population, the Some Other Race alone or in combination population and the Multiracial population, especially for people who self-identify as both White and Some Other Race.

These results are not surprising as they align with our expert research and corresponding findings this past decade, particularly with the results from the 2015 National Content Test, about the impacts of question format on race and ethnicity reporting.

To present the results, we use the concepts of *race alone*, *race in combination*, and *race alone or in combination* to frame the discussion of racial and ethnic composition, and these three concepts are central to understanding our country's changing demographics.

In addition, we have a companion data visualization that expands on these statistics, providing a comprehensive overview of racial and ethnic composition at national, state and county levels.

This story highlights national-level data. Data for all 50 states, the District of Columbia, and the Commonwealth of Puerto Rico are available in our interactive data visualization.

Data Visualizations

Race and Ethnicity in the United States: 2010 Census and 2020 Census

U.S. Decennial Census Measurement of Race and Ethnicity Across the Decades: 1790–2020

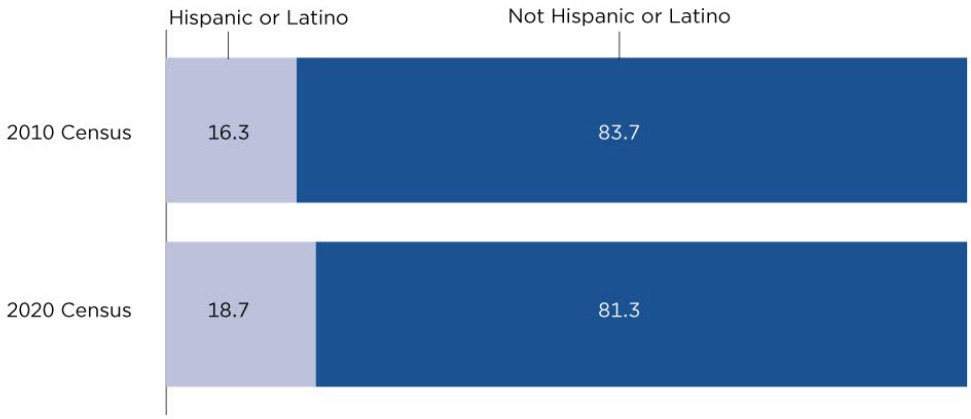
Hispanic or Latino Population

The Hispanic or Latino population grew from 50.5 million (16.3% of the U.S. population) in 2010 to 62.1 million (18.7%) in 2020.

- Between 2010 and 2020, the Hispanic or Latino population grew by 23%.
- Slightly more than half (51.1%) of the total U.S. population growth between 2010 and 2020 came from growth in the Hispanic or Latino population.

Figure 1.

Percentage Distribution of the Hispanic or Latino Population: 2010 and 2020

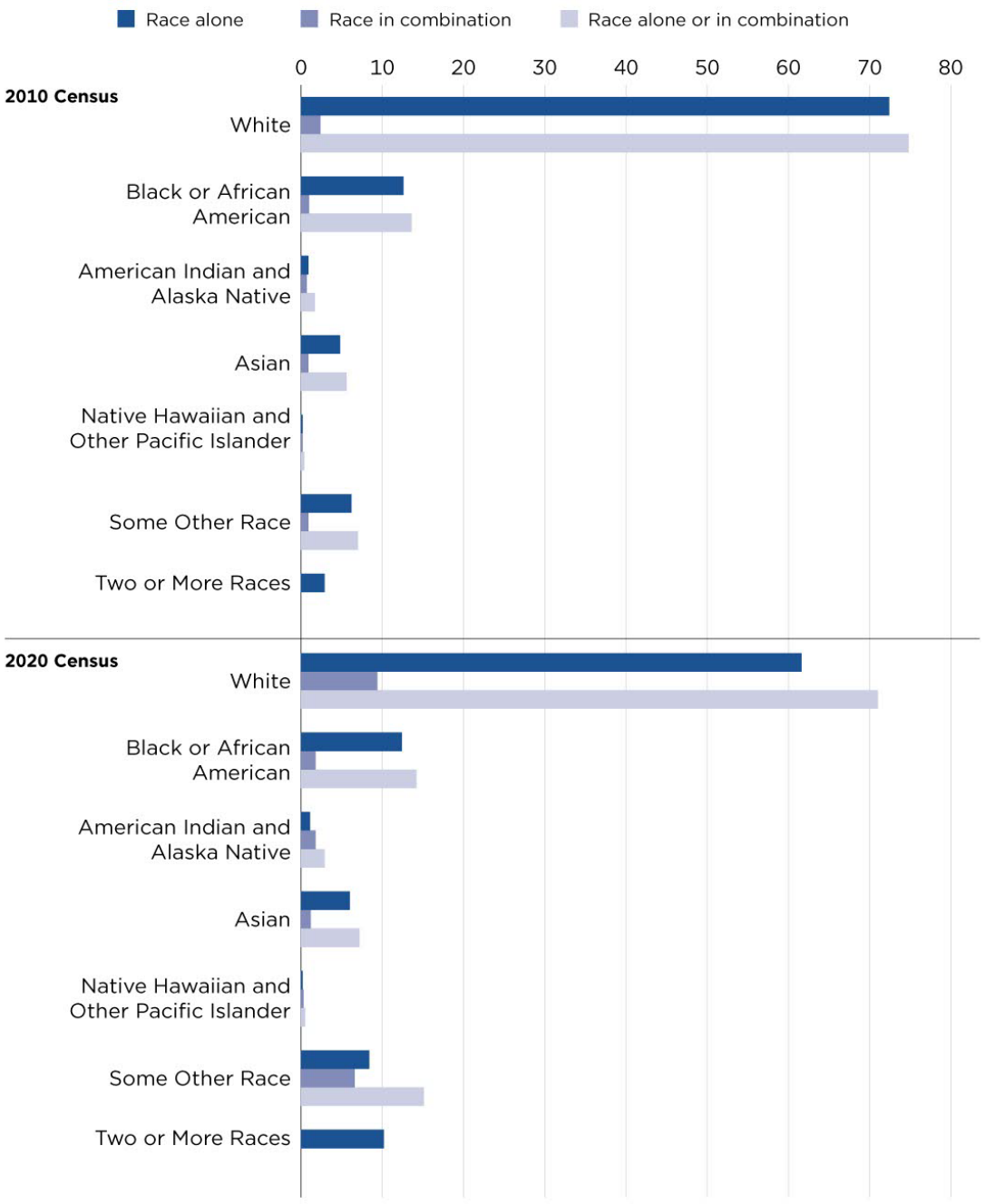


Note: Information on confidentiality protection, nonsampling error, and definitions is available at <https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/complete-tech-docs/summary-file/>.

Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File; 2020 Census Redistricting Data (Public Law 94-171) Summary File.

Figure 2.

Percentage Distribution of Race Groups: 2010 and 2020



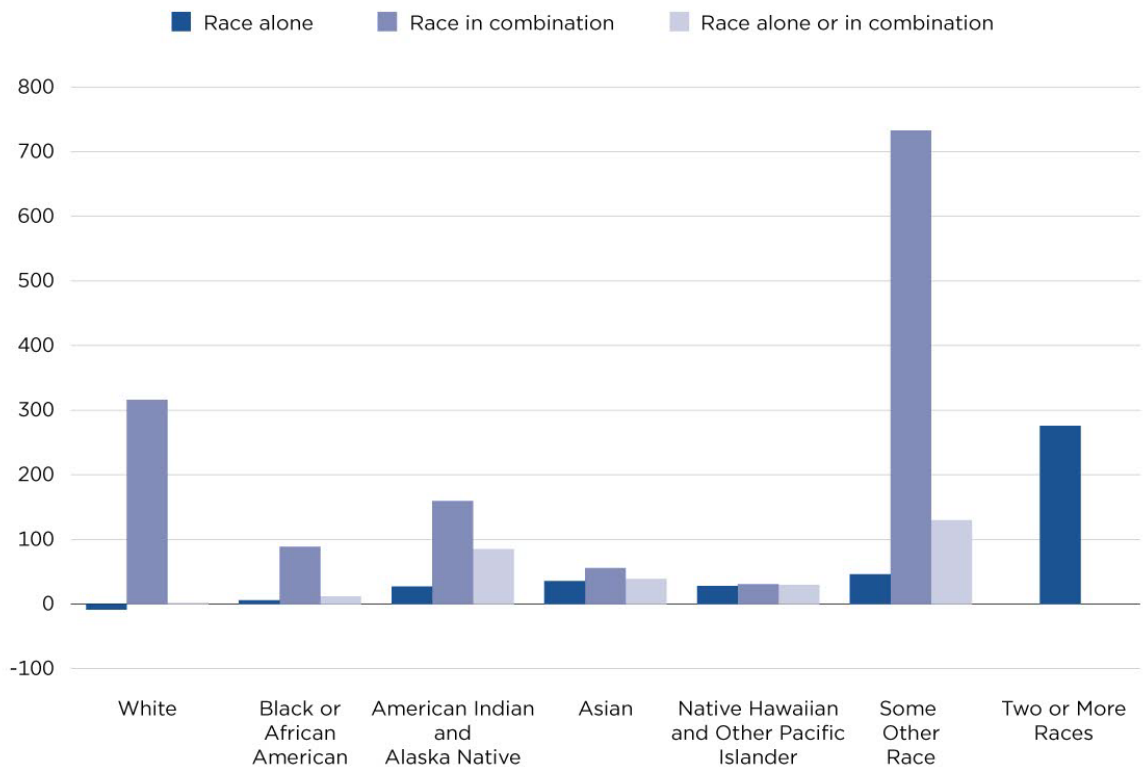
Note: Data users should use caution when comparing 2010 Census and 2020 Census race data because of improvements to the question design, data processing, and coding procedures for the 2020 Census.

Information on confidentiality protection, nonsampling error, and definitions is available at <https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/complete-tech-docs/summary-file/>.

Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File; 2020 Census Redistricting Data (Public Law 94-171) Summary File.

Figure 3.

Percentage Change in Race Groups: 2010 and 2020



Note: Data users should use caution when comparing 2010 Census and 2020 Census race data because of improvements to the question design, data processing, and coding procedures for the 2020 Census.

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Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File; 2020 Census Redistricting Data (Public Law 94-171) Summary File.

White Population

Overall, 235.4 million people reported White alone or in combination with another group.

- The White alone population accounted for 204.3 million people and 61.6% of all people living in the United States, compared with 223.6 million and 72.4% in 2010.
- Together with the 31.1 million people who identified as White in combination with another race group, such as Black or African American or Asian, the White alone or in combination population comprised 235.4 million people and 71% of the total population.
- Although the White alone population decreased by 8.6% since 2010, the White in combination population saw a 316% increase during the same period.

The observed changes in the White population could be attributed to a number of factors, including demographic change since 2010. But we expect they were largely due to the

improvements to the design of the two separate questions for race and ethnicity, data processing and coding, which enabled a more thorough and accurate depiction of how people prefer to self-identify.

Black or African American Population

The Black or African American in combination population grew by 88.7% since 2010.

- In 2020, the Black or African American alone population (41.1 million) accounted for 12.4% of all people living in the United States, compared with 38.9 million and 12.6% in 2010.
- Coupled with the 5.8 million respondents who identified as Black or African American in combination with another race group, such as White or American Indian and Alaska Native, the Black or African American alone or in combination population totaled 46.9 million people (14.2% of the total population) in 2020.
- While the Black or African American alone population grew 5.6% since 2010, the Black or African American in combination population grew 88.7%.

American Indian and Alaska Native Population

From 2010 to 2020, the American Indian and Alaska Native in combination population increased by 160%.

- In 2020, the American Indian and Alaska Native alone population (3.7 million) accounted for 1.1% of all people living in the United States, compared with 0.9% (2.9 million) in 2010.
- An additional 5.9 million people identified as American Indian and Alaska Native and another race group in 2020, such as White or Black or African American. Together, the American Indian and Alaska Native alone or in combination population comprised 9.7 million people (2.9% of the total population) in 2020, up from 5.2 million (1.7%) in 2010.
- The American Indian and Alaska Native alone population grew by 27.1%, and the American Indian and Alaska Native in combination population grew by 160% since 2010.

Asian Population

Approximately 19.9 million people (6% of all respondents) identified as Asian alone in 2020, up from 14.7 million people (4.8%) in 2010.

- Coupled with the 4.1 million respondents who identified as Asian in combination with another race group, such as White or Native Hawaiian and Other Pacific Islander, the Asian alone or in combination population comprised 24 million people (7.2% of the total population).
- The Asian alone population grew by 35.5% between 2010 and 2020. In comparison, the Asian in combination population grew by 55.5%.

Native Hawaiian and Other Pacific Islander Population

Over half of Native Hawaiians and Other Pacific Islanders identified with more than one race.

- In the 2020 Census, 689,966 people (0.2%) identified as Native Hawaiian and Other Pacific Islander alone, up from 540,013 people (0.2%) in 2010.

- Coupled with the 896,497 people who identified as Native Hawaiian and Other Pacific Islander in combination with another race group (such as Asian or White), the Native Hawaiian and Other Pacific Islander alone or in combination population totaled about 1.6 million people and 0.5% of the total population.
- The Native Hawaiian and Other Pacific Islander alone population grew by 27.8% between 2010 and 2020. In comparison, the Native Hawaiian and Other Pacific Islander in combination population grew faster — 30.8% since 2010.

How to Access, Download and Visualize Redistricting Data

Get tips and tricks on how to access, visualize and use Census Bureau data. The Census Academy team of data experts created these Data Gems.

A YouTube element has been excluded from this version of the text. You can view it online here: https://www.youtube.com/watch?v=1LZPYS0cR68&feature=youtu.be.

Some Other Race Population

The Some Other Race population was the second-largest alone or in combination race group, comprising 15.1% of the total population.

- About 27.9 million people (8.4% of all respondents) identified as Some Other Race alone in 2020, up from 19.1 million people (6.2%) in 2010.
- Coupled with the 22 million respondents who identified as Some Other Race in combination with another race group (such as White or Black or African American), the Some Other Race alone or in combination population comprised 49.9 million people.
- The Some Other Race alone population changed 46.1% and the Some Other Race in combination population changed 733% since 2010.
- Approximately 45.3 million people of Hispanic or Latino origin were classified as Some Other Race either alone or in combination, compared with only 4.6 million people who were not of Hispanic or Latino origin. Nearly all of those who were classified as Some Other Race alone were of Hispanic or Latino origin (26.2 million out of 27.9 million, or 93.9%).

The observed changes in the Some Other Race population could be attributed to a number of factors, including demographic change since 2010. But we expect they were largely due to the improvements to the design of the two separate questions for race and ethnicity, data processing and coding, which enabled a more thorough and accurate depiction of how people prefer to self-identify.

Multiracial Population

In 2020, the percentage of people who reported multiple races changed more than all of the race alone groups, increasing from 2.9% of the population (9 million people) in 2010 to 10.2% of the population (33.8 million people) in 2020.

- The largest Multiracial combinations in 2020 were White and Some Other Race (19.3 million), White and American Indian and Alaska Native (4 million), White and Black or African American (3.1 million), White and Asian (2.7 million), and Black or African American and Some Other Race (1 million).
- Between 2010 and 2020, the White and Some Other Race population added 17.6 million people to the Multiracial population, a change of over 1,000%.
- The White and American Indian and Alaska Native population also increased, growing by about 2.5 million people or 177%.
- The White and Black or African American population increased by 1.2 million people, a 67.4% change.
- The White and Asian population increased by 1.1 million people, a 65.8% change in size.
- The Black or African American and Some Other Race population increased by 722,383 people, a 230% change.

The observed changes in the Multiracial population could be attributed to a number of factors, including demographic change since 2010. But we expect they were largely due to the improvements to the design of the two separate questions for race and ethnicity, data processing, and coding, which enabled a more thorough and accurate depiction of how people prefer to self-identify.

Hispanic or Latino Origin by Race

Another way to examine data on race and ethnicity is to cross-tabulate Hispanic or Latino origin by race. As we saw with the 2010 Census, many Hispanic or Latino respondents answered the separate question on race by reporting their race as "Mexican," "Hispanic," "Latin American," "Puerto Rican," etc.

These and other responses to the race question that reflect a Hispanic or Latino origin were classified in the Some Other Race category, as people of Hispanic or Latino origin may be of any race per the 1997 OMB standards.

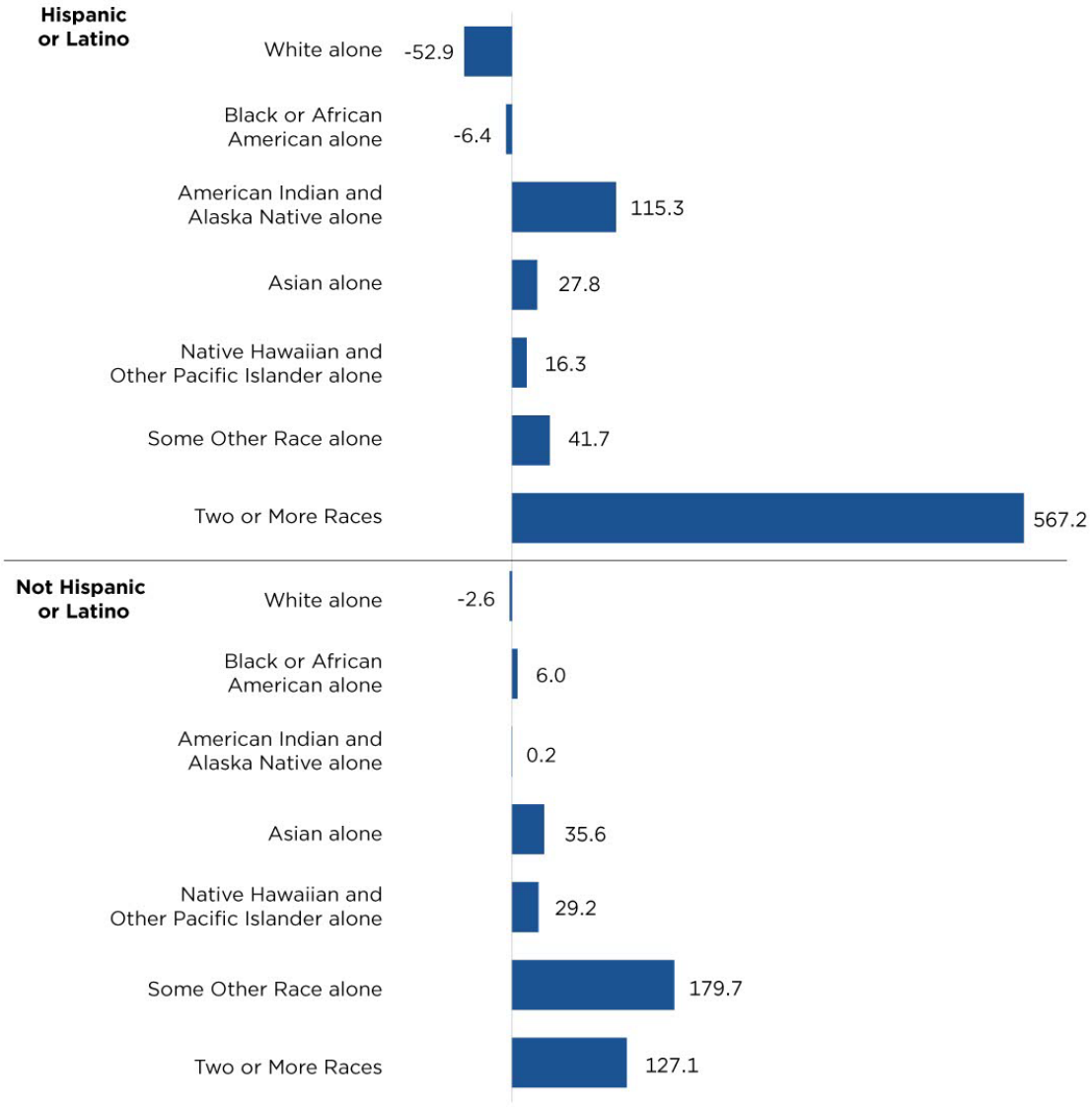
Between 2010 and 2020, the number of people of Hispanic or Latino origin reporting more than one race increased 567% from 3 million (6.0%) to 20.3 million (32.7%) (Figure 4).

We are confident these differences in racial distributions were largely due to the improvements to the design of the two separate questions for race and ethnicity, data processing, and coding, which enabled a more thorough and accurate depiction of how people prefer to self-identify.

- In 2020, among people of Hispanic or Latino origin, 26.2 million people (42.2%) identified their race as Some Other Race alone, a 41.7% change from 2010.
- The number of people of Hispanic or Latino origin who identified as White alone decreased by 52.9%, down from 26.7 million to 12.6 million over the decade.
- The number of people who were not of Hispanic or Latino origin who identified as White alone declined at a slower rate, with a -2.6% change.

Figure 4.

Percentage Change in Race Reporting by Hispanic or Latino Origin: 2010 and 2020



Note: Data users should use caution when comparing 2010 Census and 2020 Census race data because of improvements to the question design, data processing, and coding procedures for the 2020 Census.

Information on confidentiality protection, nonsampling error, and definitions is available at <https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/complete-tech-docs/summary-file/>.

Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File; 2020 Census Redistricting Data (Public Law 94-171) Summary File.

Race and Hispanic Origin by Age Group

The 2020 Census data also enable us to examine the racial and ethnic composition of the population under age 18 (children) and the population age 18 and over (adults) (Figure 5).

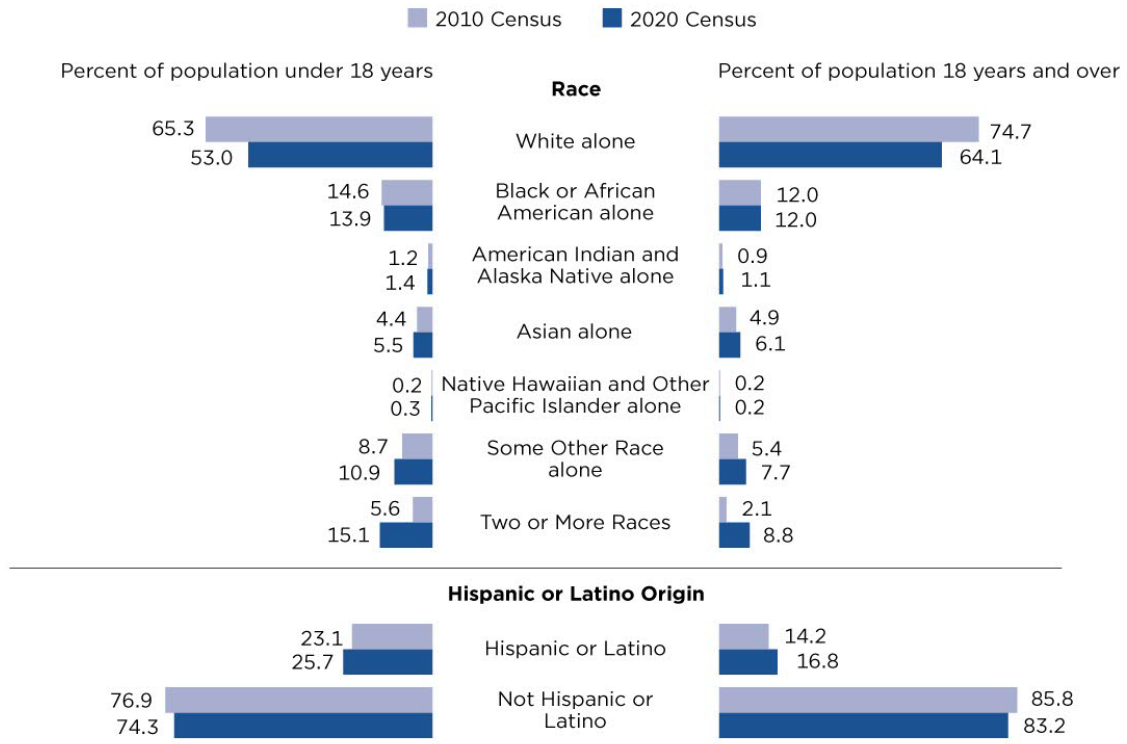
The racial and ethnic composition among children is quite different from adults. This comparison offers insights into the demographics of younger generations in this country and glimpses of what the future may bring.

- The White alone adult population (age 18 and over) went from 74.7% in 2010 to 64.1% in 2020. In contrast, the Multiracial adult population increased from 2.1% in 2010 to 8.8% in 2020.
- In 2020, the Black or African American alone (12%), American Indian and Alaska Native alone (1.1%), and Native Hawaiian and Other Pacific Islander alone (0.2%) populations comprised similar shares of the total adult population as in 2010.
- Among children, the White alone population changed from 65.3% to 53%; the Black or African American alone population changed from 14.6% to 13.9%.
- The percentages increased for children in all other groups, especially the Some Other Race alone (8.7% in 2010; 10.9% in 2020) and Multiracial (5.6% in 2010; 15.1% in 2020) populations.
- The percentages also increased for Hispanic or Latino children from 2010 to 2020 (23.1% to 25.7%).

The observed changes in the White population, Some Other Race population, and Multiracial population could be attributed to a number of factors, including demographic change since 2010. But we expect they were largely due to the improvements to the design of the two separate questions for race and ethnicity, data processing, and coding, which enabled a more thorough and accurate depiction of how people prefer to self-identify.

Figure 5.

Percentage Distribution of Race and Hispanic Origin by Age Group: 2010 and 2020



Note: Data users should use caution when comparing 2010 Census and 2020 Census race data because of improvements to the question design, data processing, and coding procedures for the 2020 Census.

Information on confidentiality protection, nonsampling error, and definitions is available at <https://www2.census.gov/programs-surveys/decennial/2020/technical-documentation/complete-tech-docs/summary-file/>.

Source: U.S. Census Bureau, 2010 Census Redistricting Data (Public Law 94-171) Summary File; 2020 Census Redistricting Data (Public Law 94-171) Summary File.

6.3.1: 2020 Census Illuminates Racial and Ethnic Composition of the Country is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

6.3.2: EEOC Case: Windings to Pay $19,500 to Settle EEOC Race Discrimination Lawsuit

Company Refused to Hire Biracial Applicant Because of His Race, Federal Agency Charged

MINNEAPOLIS - A manufacturing company based in New Ulm, Minn., will pay $19,500 to settle a race discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

EEOC's lawsuit charged that Windings, Inc. violated federal law when it refused to hire Tommie Kimball, who is biracial (African-American and white), for a vacant assembler position, and instead hired a white applicant.

According to EEOC's lawsuit, Kimball applied for a vacant assembler job and interviewed with the company in January 2014. Kimball was qualified for the job as he passed the job-related assessment tests, and had previous work experience as an assembler. EEOC's lawsuit alleged that Windings did not hire Kimball for the job because of his race, and instead hired a white applicant.

This alleged conduct violates Title VII of the Civil Rights Act of 1964, which protects applicants and employees from discrimination based on race. EEOC filed suit in U.S. District Court for the District of Minnesota *(Equal Employment Opportunity Commission v. Windings, Inc.;* Civil Action No. 15-cv-02901) after first attempting to reach a pre-litigation settlement through its conciliation process.

The consent decree settling the suit, signed by U.S. District Judge Paul A. Magnuson on March 18, 2016, provides $19,500 in monetary relief to Kimball. As part of the two-year decree, Windings will use hiring procedures to provide equal employment opportunity to all applicants including posting vacancy announcements and job listings on its website, and not solely rely on word-of-mouth recruitment or employee referrals. Windings will also use objective standards for hiring, guidelines for structured interviews, and will document interviews. Windings has adopted a written affirmative action plan, and will seek out applications from qualified minority applicants, including African-Americans. Also, Windings agrees to participate in job fairs and recruiting events that target black Americans. Finally, Windings agrees to provide EEOC with reports of its applicants, hiring and specific reasons why applicants were not selected during the decree's term.

"EEOC is committed to eliminating barriers that prevent African-American applicants from getting hired for jobs that they are qualified for," said John Hendrickson, regional attorney for EEOC's Chicago District. "This consent decree provides meaningful equitable relief designed to prevent any further race discrimination at Windings."

Tina Burnside, the trial attorney in EEOC's Minneapolis Area Office who litigated the case, added, "The law is clear that hiring decisions should be made based on a person's qualifications and not his or her race. The preventive measures that Windings has agreed to will assist in creating a work environment committed to equal opportunity."

EEOC's Chicago District Office is responsible for processing charges of discrimination, administrative enforcement, and litigation in Minnesota, North Dakota, South Dakota, Wisconsin, Illinois, and Iowa, with Area Offices in Milwaukee and Minneapolis. EEOC enforces federal laws prohibiting employment discrimination. Further information about EEOC is available on its website at www.eeoc.gov.

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7.1: Gender and Gender Inequality

Learning Objectives

By the end of this section, you should be able to:

1. Explain the influence of socialization on gender roles in the United States
2. Explain the stratification of gender in major American institutions
3. Provide examples of gender inequality in the United States
4. Describe the rise of feminism in the United States
5. Describe gender from the view of each sociological perspective

Figure \(\PageIndex{1}\): Traditional images of U.S. gender roles reinforce the idea that women should be subordinate to men. (Credit: Sport Suburban/flickr)

Gender and Socialization

The phrase “boys will be boys” is often used to justify behavior such as pushing, shoving, or other forms of aggression from young boys. The phrase implies that such behavior is unchangeable and something that is part of a boy’s nature. Aggressive behavior, when it does not

inflict significant harm, is often accepted from boys and men because it is congruent with the cultural script for masculinity. The "script" written by society is in some ways similar to a script written by a playwright. Just as a playwright expects actors to adhere to a prescribed script, society expects women and men to behave according to the expectations of their respective gender roles. Scripts are generally learned through a process known as socialization, which teaches people to behave according to social norms.

Socialization

Children learn at a young age that there are distinct expectations for boys and girls. Cross-cultural studies reveal that children are aware of gender roles by age two or three. At four or five, most children are firmly entrenched in culturally appropriate gender roles (Kane 1996). Children acquire these roles through socialization, a process in which people learn to behave in a particular way as dictated by societal values, beliefs, and attitudes. For example, society often views riding a motorcycle as a masculine activity and, therefore, considers it to be part of the male gender role. Attitudes such as this are typically based on stereotypes, oversimplified notions about members of a group. Gender stereotyping involves overgeneralizing about the attitudes, traits, or behavior patterns of women or men. For example, women may be thought of as too timid or weak to ride a motorcycle.

Figure \(\PageIndex{2}\): Although our society may have a stereotype that associates motorcycles with men, women make up a sizable portion of the biker community. (Credit: Robert Couse-Baker/flickr)

Gender stereotypes form the basis of sexism. **Sexism** refers to prejudiced beliefs that value one sex over another. It varies in its level of severity. In parts of the world where women are strongly undervalued, young girls may not be given the same access to nutrition, healthcare, and education as boys. Further, they will grow up believing they deserve to be treated differently

from boys (UNICEF 2011; Thorne 1993). While it is illegal in the United States when practiced as discrimination, unequal treatment of women continues to pervade social life. It should be noted that discrimination based on sex occurs at both the micro- and macro-levels. Many sociologists focus on discrimination that is built into the social structure; this type of discrimination is known as institutional discrimination (Pincus 2008).

Gender socialization occurs through four major agents of socialization: family, education, peer groups, and mass media. Each agent reinforces gender roles by creating and maintaining normative expectations for gender-specific behavior. Exposure also occurs through secondary agents such as religion and the workplace. Repeated exposure to these agents over time leads men and women into a false sense that they are acting naturally rather than following a socially constructed role.

Family is the first agent of socialization. There is considerable evidence that parents socialize sons and daughters differently. Generally speaking, girls are given more latitude to step outside of their prescribed gender role (Coltrane and Adams 2004; Kimmel 2000; Raffaelli and Ontai 2004). However, differential socialization typically results in greater privileges afforded to sons. For instance, boys are allowed more autonomy and independence at an earlier age than daughters. They may be given fewer restrictions on appropriate clothing, dating habits, or curfew. Sons are also often free from performing domestic duties such as cleaning or cooking and other household tasks that are considered feminine. Daughters are limited by their expectation to be passive and nurturing, generally obedient, and to assume many of the domestic responsibilities.

Even when parents set gender equality as a goal, there may be underlying indications of inequality. For example, boys may be asked to take out the garbage or perform other tasks that require strength or toughness, while girls may be asked to fold laundry or perform duties that require neatness and care. It has been found that fathers are firmer in their expectations for gender conformity than are mothers, and their expectations are stronger for sons than they are for daughters (Kimmel 2000). This is true in many types of activities, including preference for toys, play styles, discipline, chores, and personal achievements. As a result, boys tend to be particularly attuned to their father's disapproval when engaging in an activity that might be considered feminine, like dancing or singing (Coltraine and Adams 2008). Parental socialization and normative expectations also vary along lines of social class, race, and ethnicity. African American families, for instance, are more likely than Caucasians to model an egalitarian role structure for their children (Staples and Boulin Johnson 2004).

The reinforcement of gender roles and stereotypes continues once a child reaches school age. Until very recently, schools were rather explicit in their efforts to stratify boys and girls. The first step toward stratification was segregation. Girls were encouraged to take home economics or humanities courses and boys to take math and science.

Studies suggest that gender socialization still occurs in schools today, perhaps in less obvious forms (Lips 2004). Teachers may not even realize they are acting in ways that reproduce gender differentiated behavior patterns. Yet any time they ask students to arrange their seats or line up

according to gender, teachers may be asserting that boys and girls should be treated differently (Thorne 1993).

Even in levels as low as kindergarten, schools subtly convey messages to girls indicating that they are less intelligent or less important than boys. For example, in a study of teacher responses to male and female students, data indicated that teachers praised male students far more than female students. Teachers interrupted girls more often and gave boys more opportunities to expand on their ideas (Sadker and Sadker 1994). Further, in social as well as academic situations, teachers have traditionally treated boys and girls in opposite ways, reinforcing a sense of competition rather than collaboration (Thorne 1993). Boys are also permitted a greater degree of freedom to break rules or commit minor acts of deviance, whereas girls are expected to follow rules carefully and adopt an obedient role (Ready 2001).

Mimicking the actions of significant others is the first step in the development of a separate sense of self (Mead 1934). Like adults, children become agents who actively facilitate and apply normative gender expectations to those around them. When children do not conform to the appropriate gender role, they may face negative sanctions such as being criticized or marginalized by their peers. Though many of these sanctions are informal, they can be quite severe. For example, a girl who wishes to take karate class instead of dance lessons may be called a “tomboy” and face difficulty gaining acceptance from both male and female peer groups (Ready 2001). Boys, especially, are subject to intense ridicule for gender nonconformity (Coltrane and Adams 2004; Kimmel 2000).

Mass media serves as another significant agent of gender socialization. In television and movies, women tend to have less significant roles and are often portrayed as wives or mothers. When women are given a lead role, it often falls into one of two extremes: a wholesome, saint-like figure or a malevolent, hypersexual figure (Etaugh and Bridges 2003). This same inequality is pervasive in children’s movies (Smith 2008). Research indicates that in the ten top-grossing G-rated movies released between 1991 and 2013, nine out of ten characters were male (Smith 2008).

Television commercials and other forms of advertising also reinforce inequality and gender-based stereotypes. Women are almost exclusively present in ads promoting cooking, cleaning, or childcare-related products (Davis 1993). Think about the last time you saw a man star in a dishwasher or laundry detergent commercial. In general, women are underrepresented in roles that involve leadership, intelligence, or a balanced psyche. Of particular concern is the depiction of women in ways that are dehumanizing, especially in music videos. Even in mainstream advertising, however, themes intermingling violence and sexuality are quite common (Kilbourne 2000).

Social Stratification and Inequality

Stratification refers to a system in which groups of people experience unequal access to basic, yet highly valuable, social resources. There is a long history of gender stratification in the United States. When looking to the past, it would appear that society has made great strides in terms of

abolishing some of the most blatant forms of gender inequality (see timeline below) but underlying effects of male dominance still permeate many aspects of society.

- Before 1809—Women could not execute a will
- Before 1840—Women were not allowed to own or control property
- Before 1920—Women were not permitted to vote
- Before 1963—Employers could legally pay a woman less than a man for the same work
- Before 1973—Women did not have the right to a safe and legal abortion (Imbornoni 2009)

The Pay Gap

Despite making up nearly half (49.8 percent) of payroll employment, men vastly outnumber women in authoritative, powerful, and, therefore, high-earning jobs (U.S. Census Bureau 2010). Even when a woman's employment status is equal to a man's, she will generally make only 81 cents for every dollar made by her male counterpart (Payscale 2020). Women in the paid labor force also still do the majority of the unpaid work at home. On an average day, 84 percent of women (compared to 67 percent of men) spend time doing household management activities (U.S. Census Bureau 2011). This double duty keeps working women in a subordinate role in the family structure (Hochschild and Machung 1989).

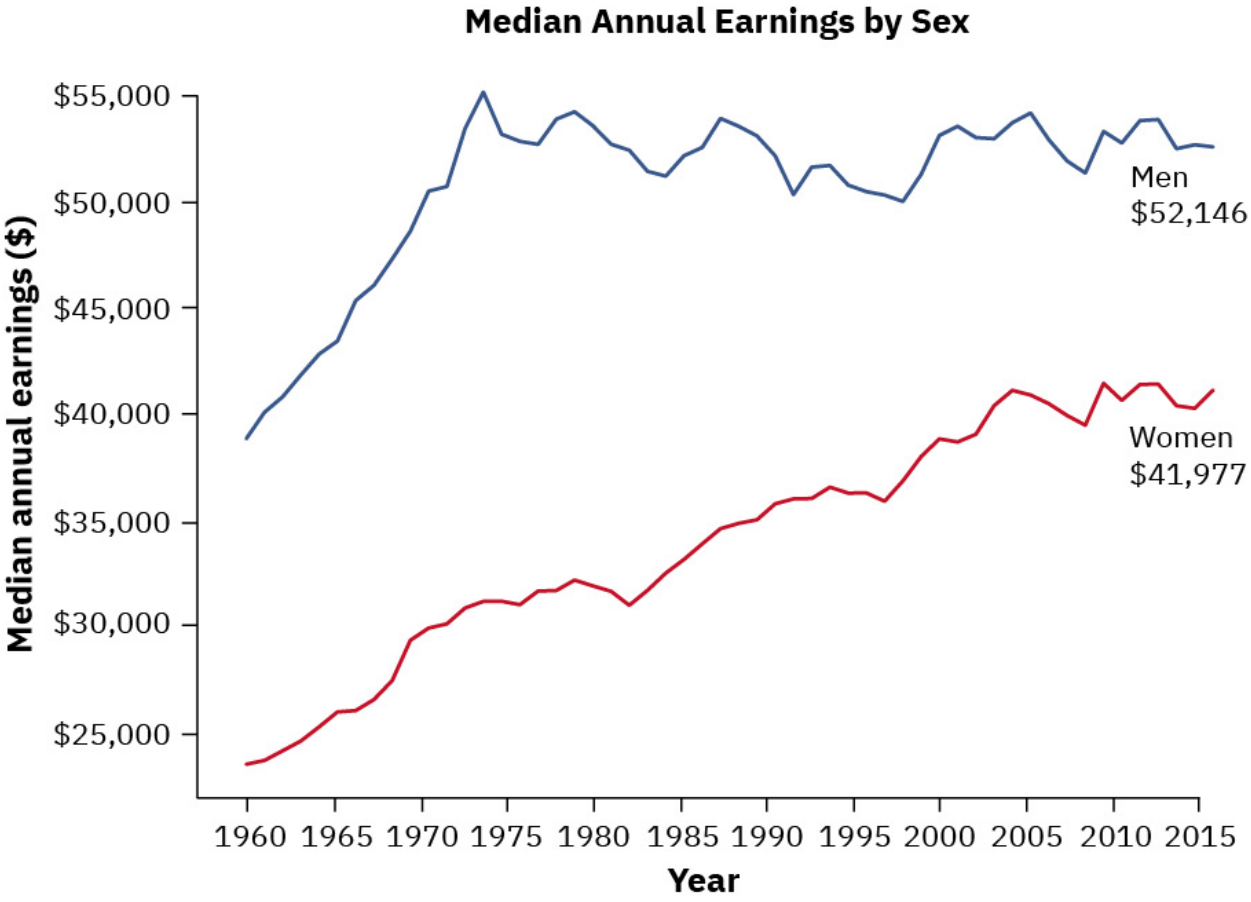

Figure \(\PageIndex{3}\): In 2017 men's overall median earnings were $52,146 and women's were

$41,977. This means that women earned 80.1% of what men earned in the United States. (Credit: Women's Bureau, U.S. Department of Labor)

Gender stratification through the division of labor is not exclusive to the United States. According to George Murdock's classic work, *Outline of World Cultures* (1954), all societies classify work by gender. When a pattern appears in all societies, it is called a cultural universal. While the phenomenon of assigning work by gender is universal, its specifics are not. The same task is not assigned to either men or women worldwide. But the way each task's associated gender is valued is notable. In Murdock's examination of the division of labor among 324 societies around the world, he found that in nearly all cases the jobs assigned to men were given greater prestige (Murdock and White 1968). Even if the job types were very similar and the differences slight, men's work was still considered more vital.

Figure \(\PageIndex{4}\): In some cultures, women do all of the household chores with no help from men, as doing housework is a sign of weakness, considered by society as a feminine trait. (Credit: Evil Erin/flickr)

Part of the gender pay gap can be attributed to unique barriers faced by women regarding work experience and promotion opportunities. A mother of young children is more likely to drop out of the labor force for several years or work on a reduced schedule than is the father. As a result, women in their 30s and 40s are likely, on average, to have less job experience than men. This effect becomes more evident when considering the pay rates of two groups of women: those who did *not* leave the workforce and those who did: In the United States, childless women with the

same education and experience levels as men are typically paid with closer (but not exact) parity to men. However, women with families and children are paid less: Mothers are recommended a 7.9 percent lower starting salary than non-mothers, which is 8.6 percent lower than men (Correll 2007).

This evidence points to levels of discrimination that go beyond behaviors by individual companies or organizations. As discussed earlier in the gender roles section, many of these gaps are rooted in America's social patterns of discrimination, which involve the roles that different genders play in child-rearing, rather than individual discrimination by employers in hiring and salary decisions. On the other hand, legal and ethical practices demand that organizations do their part to promote more equity among all genders.

The Glass Ceiling

The idea that women are unable to reach the executive suite is known as the glass ceiling. It is an invisible barrier that women encounter when trying to win jobs in the highest level of business. At the beginning of 2021, for example, a record 41 of the world's largest 500 companies were run by women. While a vast improvement over the number twenty years earlier – where only two of the companies were run by women – these 41 chief executives still only represent eight percent of those large companies (Newcomb 2020).

Why do women have a more difficult time reaching the top of a company? One idea is that there is still a stereotype in the United States that women aren't aggressive enough to handle the boardroom or that they tend to seek jobs and work with other women (Reiners 2019). Other issues stem from the gender biases based on gender roles and motherhood discussed above.

Another idea is that women lack mentors, executives who take an interest and get them into the right meetings and introduce them to the right people to succeed (Murrell & Blake-Beard 2017).

Women in Politics

One of the most important places for women to help other women is in politics. Historically in the United States, like many other institutions, political representation has been mostly made up of White men. By not having women in government, their issues are being decided by people who don't share their perspective. The number of women elected to serve in Congress has increased over the years, but does not yet accurately reflect the general population. For example, in 2018, the population of the United States was 49 percent male and 51 percent female, but the population of Congress was 78.8 percent male and 21.2 percent female (Manning 2018). Over the years, the number of women in the federal government has increased, but until it accurately reflects the population, there will be inequalities in our laws.

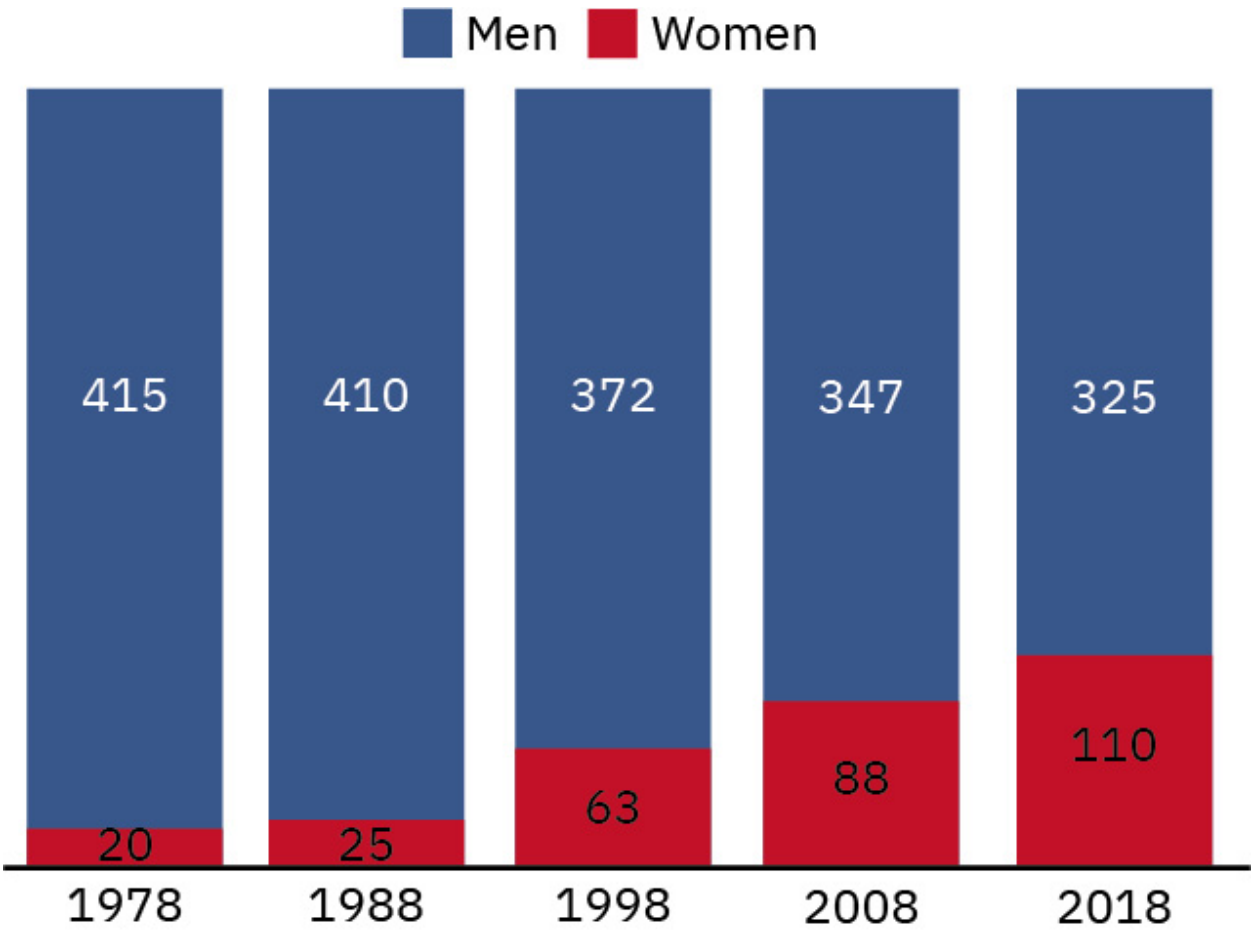

Figure \(\PageIndex{5}\): Breakdown of Congressional Membership by Gender. 2021 saw a record number of women in Congress, with 120 women serving in the House and 24 serving in the Senate. Gender representation has been steadily increasing over time, but is not close to being equal. (Credit: Based on data from Center for American Women in Politics, Rutgers University)

Movements for Change: Feminism

One of the underlying issues that continues to plague women in the United States is **misogyny**. This is the hatred of or, aversion to, or prejudice against women. Over the years misogyny has evolved as an ideology that men are superior to women in all aspects of life. There have been multiple movements to try and fight this prejudice.

In 1963, writer and feminist Betty Friedan published *The Feminine Mystique* in which she contested the post-World War II belief that it was women's sole destiny to marry and bear children. Friedan's book began to raise the consciousness of many women who agreed that homemaking in the suburbs sapped them of their individualism and left them unsatisfied. In 1966, the National Organization for Women (NOW) formed and proceeded to set an agenda for the *feminist movement*. Framed by a statement of purpose written by Friedan, the agenda began by proclaiming NOW's goal to make possible women's participation in all aspects of American life and to gain for them all the rights enjoyed by men.

Feminists engaged in protests and actions designed to bring awareness and change. For example, the New York Radical Women demonstrated at the 1968 Miss America Pageant in Atlantic City to bring attention to the contest's—and society's—exploitation of women. The protestors tossed instruments of women's oppression, including high-heeled shoes, curlers, girdles, and bras, into a "freedom trash can." News accounts incorrectly described the protest as a "bra-burning," which at the time was a way to demean and trivialize the issue of women's rights (Gay 2018).

Other protests gave women a more significant voice in a male-dominated social, political, and entertainment climate. For decades, *Ladies Home Journal* had been a highly influential women's magazine, managed and edited almost entirely by men. Men even wrote the advice columns and beauty articles. In 1970, protesters held a sit-in at the magazine's offices, demanding that the company hire a woman editor-in-chief, add women and non-White writers at fair pay, and expand the publication's focus.

Feminists were concerned with far more than protests, however. In the 1970s, they opened battered women's shelters and successfully fought for protection from employment discrimination for pregnant women, reform of rape laws (such as the abolition of laws requiring a witness to corroborate a woman's report of rape), criminalization of domestic violence, and funding for schools that sought to counter sexist stereotypes of women. In 1973, the U.S. Supreme Court in *Roe v. Wade* invalidated a number of state laws under which abortions obtained during the first three months of pregnancy were illegal. This made a non-therapeutic abortion a legal medical procedure nationwide.

Gloria Steinem had pushed through gender barriers to take on serious journalism subjects, and had emerged as a prominent advocate for women's rights. Through her work, Steinem met Dorothy Pittman-Hughes, who had founded New York City's first shelter for domestic violence victims as well as the city's Agency for Child Development. Together they founded *Ms*. Magazine, which avoided articles on homemaking and fashion in favor of pieces on women's rights and empowerment. *Ms*. showcased powerful and accomplished women such as Shirley Chisholm and Sissy Farenthold, and was among the first publications to bring domestic violence, sexual harassment, and body image issues to the national conversation (Pogrebrin 2011).

Many advances in women's rights were the result of women's greater engagement in politics. For example, Patsy Mink, the first Asian American woman elected to Congress, was the co-author of the Education Amendments Act of 1972, Title IX of which prohibits sex discrimination in education. Mink had been interested in fighting discrimination in education since her youth, when she opposed racial segregation in campus housing while a student at the University of Nebraska. She went to law school after being denied admission to medical school because of her gender. Like Mink, many other women sought and won political office, many with the help of the National Women's Political Caucus (NWPC). In 1971, the NWPC was formed by Bella Abzug, Gloria Steinem, Shirley Chisholm, and other leading feminists to encourage women's participation in political parties, elect women to office, and raise money for their campaign.

Figure \(\PageIndex{6}\): “Unbought and Unbossed”: Shirley Chisholm was the first Black United States Congresswoman, the co-founder of the Congressional Black Caucus, and a candidate for a major-party Presidential nomination.

Shirley Chisholm personally took up the mantle of women’s involvement in politics. Born of immigrant parents, she earned degrees from Brooklyn College and Columbia University, and began a career in early childhood education and advocacy. In the 1950’s she joined various political action groups, worked on election campaigns, and pushed for housing and economic reforms. After leaving one organization over its refusal to involve women in the decision-making process, she sought to increase gender and racial diversity within political and activist organizations throughout New York City. In 1968, she became the first Black woman elected to Congress. Refusing to take the quiet role expected of new Representatives, she immediately began sponsoring bills and initiatives. She spoke out against the Vietnam War, and fought for programs such as Head Start and the national school lunch program, which was eventually signed into law after Chisholm led an effort to override a presidential veto. Chisholm would eventually undertake a groundbreaking presidential run in 1972, and is viewed as paving the way for other women, and especially women of color, achieving political and social prominence (Emmrich 2019).

Theoretical Perspectives on Gender

Sociological theories help sociologists to develop questions and interpret data. For example, a sociologist studying why middle-school girls are more likely than their male counterparts to fall

behind grade-level expectations in math and science might use a feminist perspective to frame her research. Another scholar might proceed from the conflict perspective to investigate why women are underrepresented in political office, and an interactionist might examine how the symbols of femininity interact with symbols of political authority to affect how women in Congress are treated by their male counterparts in meetings.

Structural Functionalism

Structural functionalism has provided one of the most important perspectives of sociological research in the twentieth century and has been a major influence on research in the social sciences, including gender studies. Viewing the family as the most integral component of society, assumptions about gender roles within marriage assume a prominent place in this perspective.

Functionalists argue that gender roles were established well before the pre-industrial era when men typically took care of responsibilities outside of the home, such as hunting, and women typically took care of the domestic responsibilities in or around the home. These roles were considered functional because women were often limited by the physical restraints of pregnancy and nursing and unable to leave the home for long periods of time. Once established, these roles were passed on to subsequent generations since they served as an effective means of keeping the family system functioning properly.

When changes occurred in the social and economic climate of the United States during World War II, changes in the family structure also occurred. Many women had to assume the role of breadwinner (or modern hunter-gatherer) alongside their domestic role in order to stabilize a rapidly changing society. When the men returned from war and wanted to reclaim their jobs, society fell back into a state of imbalance, as many women did not want to forfeit their wage-earning positions (Hawke 2007).

Conflict Theory

According to conflict theory, society is a struggle for dominance among social groups (like women versus men) that compete for scarce resources. When sociologists examine gender from this perspective, we can view men as the dominant group and women as the subordinate group. According to conflict theory, social problems are created when dominant groups exploit or oppress subordinate groups. Consider the Women's Suffrage Movement or the debate over women's "right to choose" their reproductive futures. It is difficult for women to rise above men, as dominant group members create the rules for success and opportunity in society (Farrington and Chertok 1993).

Friedrich Engels, a German sociologist, studied family structure and gender roles. Engels suggested that the same owner-worker relationship seen in the labor force is also seen in the household, with women assuming the role of the proletariat. This is due to women's dependence on men for the attainment of wages, which is even worse for women who are entirely dependent upon their spouses for economic support. Contemporary conflict theorists suggest that when women become wage earners, they can gain power in the family structure and create more

democratic arrangements in the home, although they may still carry the majority of the domestic burden, as noted earlier (Rismanand and Johnson-Sumerford 1998).

Feminist Theory

Feminist theory is a type of conflict theory that examines inequalities in gender-related issues. It uses the conflict approach to examine the maintenance of gender roles and inequalities. Radical feminism, in particular, considers the role of the family in perpetuating male dominance. In patriarchal societies, men's contributions are seen as more valuable than those of women. Patriarchal perspectives and arrangements are widespread and taken for granted. As a result, women's viewpoints tend to be silenced or marginalized to the point of being discredited or considered invalid.

Sanday's study of the Indonesian Minangkabau (2004) revealed that in societies some consider to be matriarchies (where women comprise the dominant group), women and men tend to work cooperatively rather than competitively regardless of whether a job is considered feminine by U.S. standards. The men, however, do not experience the sense of bifurcated consciousness under this social structure that modern U.S. females encounter (Sanday 2004).

Symbolic Interactionism

Symbolic interactionism aims to understand human behavior by analyzing the critical role of symbols in human interaction. This is certainly relevant to the discussion of masculinity and femininity. Imagine that you walk into a bank hoping to get a small loan for school, a home, or a small business venture. If you meet with a male loan officer, you may state your case logically by listing all the hard numbers that make you a qualified applicant as a means of appealing to the analytical characteristics associated with masculinity. If you meet with a female loan officer, you may make an emotional appeal by stating your good intentions as a means of appealing to the caring characteristics associated with femininity.

Because the meanings attached to symbols are socially created and not natural, and fluid, not static, we act and react to symbols based on the current assigned meaning. The word *gay*, for example, once meant "cheerful," but by the 1960s it carried the primary meaning of "homosexual." In transition, it was even known to mean "careless" or "bright and showing" (Oxford American Dictionary 2010). Furthermore, the word *gay* (as it refers to a person), carried a somewhat negative and unfavorable meaning fifty years ago, but it has since gained more neutral and even positive connotations. When people perform tasks or possess characteristics based on the gender role assigned to them, they are said to be **doing gender**. This notion is based on the work of West and Zimmerman (1987). Whether we are expressing our masculinity or femininity, West and Zimmerman argue, we are always "doing gender." Thus, gender is something we do or perform, not something we are.

In other words, both gender and sexuality are socially constructed. The **social construction of sexuality** refers to the way in which socially created definitions about the cultural appropriateness of sex-linked behavior shape the way people see and experience sexuality. This is in marked contrast to theories of sex, gender, and sexuality that link male and female behavior

to **biological determinism**, or the belief that men and women behave differently due to differences in their biology.

SOCIOLOGICAL RESEARCH

Being Male, Being Female, and Being Healthy

In 1971, Broverman and Broverman conducted a groundbreaking study on the traits mental health workers ascribed to males and females. When asked to name the characteristics of a female, the list featured words such as unaggressive, gentle, emotional, tactful, less logical, not ambitious, dependent, passive, and neat. The list of male characteristics featured words such as aggressive, rough, unemotional, blunt, logical, direct, active, and sloppy (Seem and Clark 2006). Later, when asked to describe the characteristics of a healthy person (not gender-specific), the list was nearly identical to that of a male.

This study uncovered the general assumption that being female is associated with being somewhat unhealthy or not of sound mind. This concept seems extremely dated, but in 2006, Seem and Clark replicated the study and found similar results. Again, the characteristics associated with a healthy male were very similar to that of a healthy (genderless) adult. The list of characteristics associated with being female broadened somewhat but did not show significant change from the original study (Seem and Clark 2006). This interpretation of feminine characteristic may help us one day better understand gender disparities in certain illnesses, such as why one in eight women can be expected to develop clinical depression in her lifetime (National Institute of Mental Health 1999). Perhaps these diagnoses are not just a reflection of women's health, but also a reflection of society's labeling of female characteristics, or the result of institutionalized sexism.

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7.2: Sexual Harassment

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964.

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when submission to or rejection of this conduct explicitly or implicitly affects an individual's employment, unreasonably interferes with an individual's work performance, or creates an intimidating, hostile, or offensive work environment.

Sexual harassment can occur in a variety of circumstances, including but not limited to the following:

- The victim, as well as the harasser, may be a woman or a man. The victim does not have to be of the opposite sex.
- The harasser can be the victim's supervisor, an agent of the employer, a supervisor in another area, a co-worker, or a non-employee.
- The victim does not have to be the person harassed but could be anyone affected by the offensive conduct.
- Unlawful sexual harassment may occur without economic injury to or discharge of the victim.
- The harasser's conduct must be unwelcome.

It is helpful for the victim to directly inform the harasser that the conduct is unwelcome and must stop. The victim should use any employer complaint mechanism or grievance system available.

When investigating allegations of sexual harassment, EEOC looks at the whole record: the circumstances, such as the nature of the sexual advances, and the context in which the alleged incidents occurred. A determination on the allegations is made from the facts on a case-by-case basis.

Prevention is the best tool to eliminate sexual harassment in the workplace. Employers are encouraged to take steps necessary to prevent sexual harassment from occurring. They should clearly communicate to employees that sexual harassment will not be tolerated. They can do so by establishing an effective complaint or grievance process and taking immediate and appropriate action when an employee complains.

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7.3: Pay Discrimination

Equal Pay Day

Equal Pay Day—which marks how many days into the new calendar year women must work until they earn what men earned during the previous year—calls attention to the gap between men's and women's wages and to the persistence of pay discrimination based on sex.

Pay discrimination is a broad term. It not only includes discrimination in the regular rate of pay but also in overtime pay, bonuses, stock options, profit-sharing and bonus plans, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and other benefits.

EEOC and Pay Discrimination Based on Sex

The Equal Employment Opportunity Commission (EEOC) enforces two federal laws prohibiting pay discrimination based on sex:

- ***Title VII of the Civil Right Act of 1964***

  Title VII of the Civil Rights Act of 1964 (Title VII) prohibits discrimination in pay and all other aspects of employment based on sex (as well as, race, color, national origin, religion, or retaliation). Title VII became law after the civil rights movement of the 1960s.

  Under Title VII, the question is whether you were paid less because of your sex. Occasionally, a worker may learn that the employer has a policy of pay discrimination or that an employer made direct statements about it, but usually evidence of pay discrimination is more subtle. If an employer pays women less than men in the same situation, and its explanation (if any) does not adequately explain the difference, then there is indirect proof of pay discrimination under Title VII.

- ***Equal Pay Act of 1963***

  The Equal Pay Act of 1963 (EPA) is more technical than Title VII, and it includes several requirements for challenging pay discrimination based on sex. You must show that the employer paid unequal wages to men and women who work in jobs that have the same common core of tasks, require substantially equal skill, effort, and responsibility, and are performed under similar working conditions. Also, the jobs generally must be performed at the same physical place of business or "establishment." For more detail about each of these factors, see *EEOC: Equal Pay Act of 1963 and Lilly Ledbetter Fair Pay Act of 2009* and *EEOC: What You Should Know: Questions and Answers About the Equal Pay Act*.

  The EPA also specifies the ways employers can justify such a difference in pay: seniority, merit, quantity or quality of production, or another factor other than sex.

Qs and As: How to Challenge Pay Discrimination Based on Sex with the EEOC

1. **Do Title VII and the EPA apply to the same employers?**

   No, but they overlap for many employers. Title VII only applies to employers with 15 or more employees, but the EPA also generally applies to employers with fewer than 15 employees. For example, if an employer with 10 employees pays a woman less than a man to do the same functions, the woman would use the EPA rather than Title VII to challenge the practice.

   Title VII and the EPA both apply to the federal government and prohibit it from discriminating in pay based on sex.

2. **How do I start a Title VII complaint about pay discrimination?**

   If you work for a private company or a state or local government agency with 15 or more employees, the first step is to file a "charge of discrimination" (charge) with the EEOC or your state or local fair employment agency. If you work for the federal government, the first step is to contact an EEO counselor at your agency.

3. **Is there a deadline for starting a Title VII challenge to pay discrimination?**

   Yes. You must file a Title VII charge within 180 days of when you received the discriminatory pay. (This 180-day deadline may be extended to 300 days if your charge also is covered by a state or local anti-discrimination law.)

   - To challenge pay discrimination by the federal government, you only have 45 days to contact your agency's EEO counselor.
   - To calculate your deadline for challenging pay discrimination, start counting from the date of your most recent discriminatory paycheck. Under the Lilly Ledbetter Fair Pay Act of 2009, pay discrimination occurs *with payment of every paycheck* that is lower because of a decision that set the discriminatory pay, *even if* the employer adopted that decision more than 180 or 300 days ago.

4. **Does the EPA have the same deadlines as Title VII for challenging pay discrimination?**

   No. Under the EPA, you generally have two years from the date of payment to go to the EEOC or directly to court. The only exception is if you can show that the employer intentionally disregarded the legal requirements of the EPA; then, you have three years from the discriminatory payment.

   - You should know that EPA claims often also raise Title VII sex discrimination issues, so it may be advisable to safeguard all of your rights by filing charges under both the EPA and Title VII before the earlier Title VII deadline (see question 4).

Pay Discrimination for Reasons Other Than Sex

5. **Is pay discrimination prohibited for reasons other than sex?**

Yes, the laws enforced by the EEOC bar pay discrimination on other bases:

- Title VII prohibits discrimination based on race, color, religion, or national origin (in addition to sex);
- The Age Discrimination in Employment Act (ADEA) prohibits discrimination based on age (40 or over);
- The Americans with Disabilities Act (ADA) prohibits discrimination based on disability; and
- The Genetic Information Nondiscrimination Act (GINA) prohibits discrimination based on genetic information.

Each of these laws (and the EPA) bars employers from retaliating or engaging in reprisal against employees who oppose pay discrimination *or* file a charge, testify, or participate in an investigation, proceeding, or litigation under the Equal Pay Act, Title VII, the ADEA, the ADA, or GINA.

6. **What are some examples of pay discrimination that violates Title VII, the ADEA, the ADA, or GINA?**

Pay discrimination under Title VII, the ADEA, the ADA, or GINA can occur in a variety of forms. For example:

- A discriminatory pay system that disadvantaged Hispanics in the past was ended by the employer, but salary disparities caused by the system still continue for Hispanic workers.
- An employer pays an employee with a disability less than similarly situated employees without disabilities, and the employer's explanation (if any) does not satisfactorily explain the difference.
- An employer does not intentionally pay older workers less because they are age 40 or above, but it still uses a pay system that effectively limits their rate of pay in the absence of any reasonable factors other than age.

More Information

7. **Where can I find more EEOC information about pay discrimination?**

Documents on EEOC's website that provide detailed information about pay discrimination include:

- EEOC Compliance Manual Section on Compensation Discrimination
- Questions and Answers: Compliance Manual Section on Compensation Discrimination

8. **How can I contact the EEOC or other federal government agencies that can help me challenge pay discrimination?**

U.S. Equal Employment Opportunity Commission
Phone: 1-800-669-4000
(TTY: 1-800-669-6820)
Web site: www.eeoc.gov

- For quick answers from the EEOC, search our database of frequently asked questions.
- If you are ready to file a charge of employment discrimination, you may start with our online assessment system.
- If you need to find an EEOC office, please see the EEOC Office List and Map.

U.S. Department of Labor
Phone: 1-866-4-USA-DOL
(TTY: 1-877-889-5627)
Web site: www.dol.gov

- Department of Labor, Guide to Women's Equal Pay Rights
- Department of Labor, An Employer's Guide to Equal Pay
- Department of Labor, Office of Federal Contract Compliance Programs, Equal Pay Fact Sheet

National Labor Relations Board
Phone: 1-866-667-6572
(TTY: 1-866-315-6572)
Web site: www.nlrb.gov

9. **As a federal employee, where can I learn more about my rights and the federal EEO system?**

   For general information on the federal sector EEO process, see the EEOC's website, http://www.eeoc.gov/federal/fed_employees/complaint_overview.cfm.

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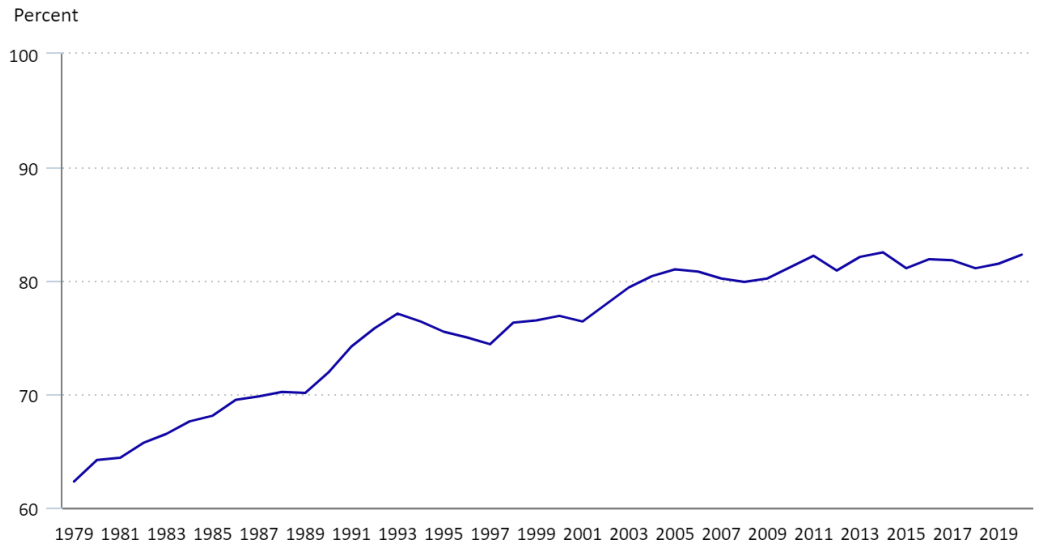
7.4: Highlights of Women's Earnings in 2020

In 2020, women who were full-time wage and salary workers had median usual weekly earnings that were 82 percent of those of male full-time wage and salary workers. In 1979, the first year for which comparable earnings data are available, women's earnings were 62 percent of men's. Most of the growth in women's earnings relative to men's occurred in the 1980s (when the women's-to-men's ratio went from 64 percent to 70 percent) and in the 1990s (when the ratio went from 72 percent to 77 percent). Since 2004, the women's-to-men's earnings ratio has remained in the 80 to 83 percent range.

Data on median weekly earnings for 2020 reflect the impact of the coronavirus (COVID-19) pandemic on the labor market. Comparisons with data on earnings for earlier years should be interpreted with caution. Large declines in employment in 2020, particularly among low-wage workers (who were disproportionately affected by job loss related to the pandemic), resulted in changes in the median earnings distribution. This large and abrupt shift in the earnings distribution during the year manifested as an upward bump in the rate of earnings growth in 2020; however, the underlying rate of growth in workers' median weekly earnings during the year is more difficult to discern because of the sudden, dramatic shift in the earnings distribution. More information on labor market developments in 2020 is available at www.bls.gov/covid19/effects-of-covid-19-pandemic-and-response-on-the-employment-situation-news-release.htm.

Chart 1. Women's earnings as a percentage of men's, for full-time wage and salary workers, 1979–2020 annual averages



Note: Percentages are calculated from annual averages of median usual weekly earnings for full-time wage and salary workers.

This report presents earnings data from the Current Population Survey (CPS), a national monthly sample survey of about 60,000 eligible households conducted by the U.S. Census Bureau for the U.S. Bureau of Labor Statistics (BLS). The weekly and hourly earnings estimates in this report reflect information collected from one-fourth of the households in the monthly survey and averaged for the calendar year. The data in this report are distinct from the annual earnings estimates for full-time, year-round workers collected separately in the Annual Social and Economic Supplement (ASEC) to the CPS and published by the U.S. Census Bureau. (See the BLS website for an explanation of the differences in these datasets.)

The earnings comparisons in this report are on a broad level and do not control for many factors that can be important in explaining earnings differences, such as job skills and responsibilities, work experience, and specialization. The earnings estimates referenced throughout this report are medians. The median is the midpoint in the earnings distribution, with half of workers having earnings above the median level and half having earnings below.

See the technical notes for more information, including a description of the source of the data and an explanation of the concepts and definitions used in this report.

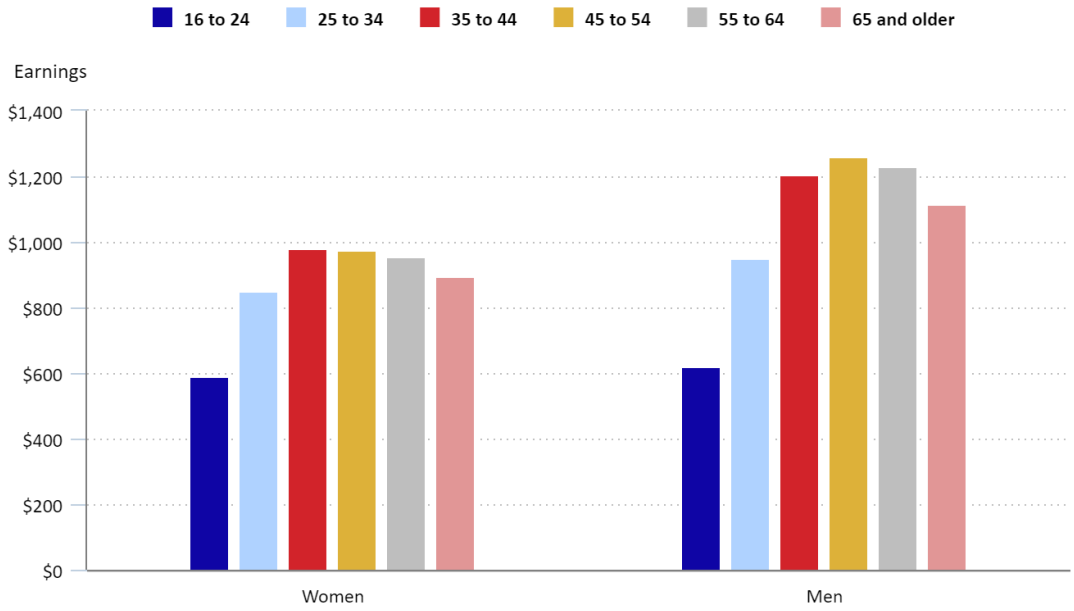
Earnings of Full-time Workers

This report highlights data for women and men who usually work full time (35 hours or more per week) in wage and salary jobs, with sections focusing on characteristics, such as age, race and Hispanic or Latino ethnicity, education, occupation, and more.

Earnings By Age Group

In 2020, median weekly earnings were $891 for all women age 16 and older. For men age 16 and older, median weekly earnings were $1,082. Women's median weekly earnings were highest for those between the ages of 35 to 44, with earnings of $978, and those ages 45 to 54, with earnings of $977. Women ages 55 to 64 had earnings that were slightly lower, at $955. For men, earnings were highest for 45- to 54-year-olds, with earnings of $1,260. Men ages 55 to 64 and ages 35 to 44 had earnings that were slightly lower, $1,228 and $1,205, respectively. Young women and men ages 16 to 24 had the lowest earnings ($589 and $622, respectively).

Chart 2. Median usual weekly earnings of women and men who are full-time wage and salary workers, by age, 2020 annual averages



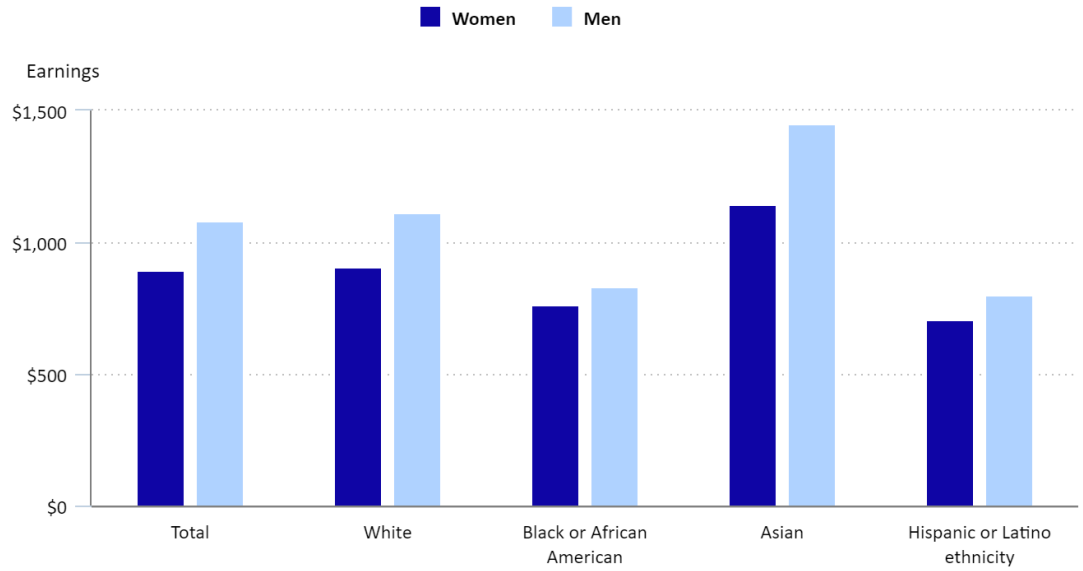
In 2020, women's earnings ranged from 78 percent to 81 percent of men's among workers age 35 and older. For those under age 35, the earnings differences between women and men were smaller. Women ages 25 to 34 earned 90 percent of what men did, while women ages 16 to 24 earned 95 percent of what men earned. The earnings difference between men and women has historically been smaller for those under age 35 than for those in older age groups.

Women's-to-men's earnings ratios have grown substantially for most age groups since 1979. For young workers ages 16 to 24, the gains occurred primarily in the 1980s. For workers ages 25 to 64, the gains continued into the 2000s, but have tapered off in recent years.

Earnings By Race and Ethnicity

Asian women and men earned more than their White, Black, and Hispanic counterparts in 2020. Among women, Whites ($905) earned 79 percent as much as Asians ($1,143); Blacks ($764) earned 67 percent; and Hispanics ($705) earned 62 percent. Among men, these earnings differences were even larger: White men ($1,110) earned 77 percent as much as Asian men ($1,447); Black men ($830) earned 57 percent as much; and Hispanic men ($797) earned 55 percent.

Chart 3. Median usual weekly earnings of women and men who are full-time wage and salary workers, by race and Hispanic or Latino ethnicity, 2020 annual averages



Note: People of Hispanic or Latino ethnicity may be of any race. Estimates for the race groups shown (White, Black or African American, and Asian) include Hispanics.

Earnings differences between women and men were largest among Asians and among Whites. Asian women earned 79 percent as much as Asian men in 2020, and White women earned 82 percent as much as White men. In comparison, Black women had median earnings that were 92 percent of Black men's, and Hispanic women's earnings were 89 percent of Hispanic men's.

Women's earnings have increased considerably since 1979 (the first year for which comparable data for Whites, Blacks, and Hispanics are available), with White women experiencing the greatest earnings growth. From 1979 to 2019, inflation-adjusted median weekly earnings (also called constant-dollar earnings) increased by 39 percent for White women, by 27 percent for Black women, and by 24 percent for Hispanic women. For White and Black women, gains tapered off around 2004 and showed little net growth through 2019. By contrast, Hispanic women's earnings remained on an upward trend, although substantial earnings growth for them did not begin until the late 1990s. Earnings of White, Black, and Hispanic women increased from 2019 to 2020, but these increases must be interpreted with caution due to the pandemic-related employment declines in 2020. These employment declines, which were most notable among lower-paid workers, put upward pressure on median weekly earnings estimates.

The long-term trend in men's earnings has been quite different than that for women. Inflation-adjusted earnings for White and Black men trended down from 1979 through the first part of the 1990s, followed by a period of growth that stalled in the early 2000s. For Hispanic men, earnings also declined from 1979 through the mid-1990s, then began to trend up. From 1979 through 2019, inflation-adjusted earnings showed little change on net for White (6 percent), Black (3 percent), and Hispanic (4 percent) men. Median weekly earnings increased from 2019 to 2020

for White, Black, and Hispanic men, but these increases reflect the effects of the pandemic-related employment declines and must be interpreted with caution.

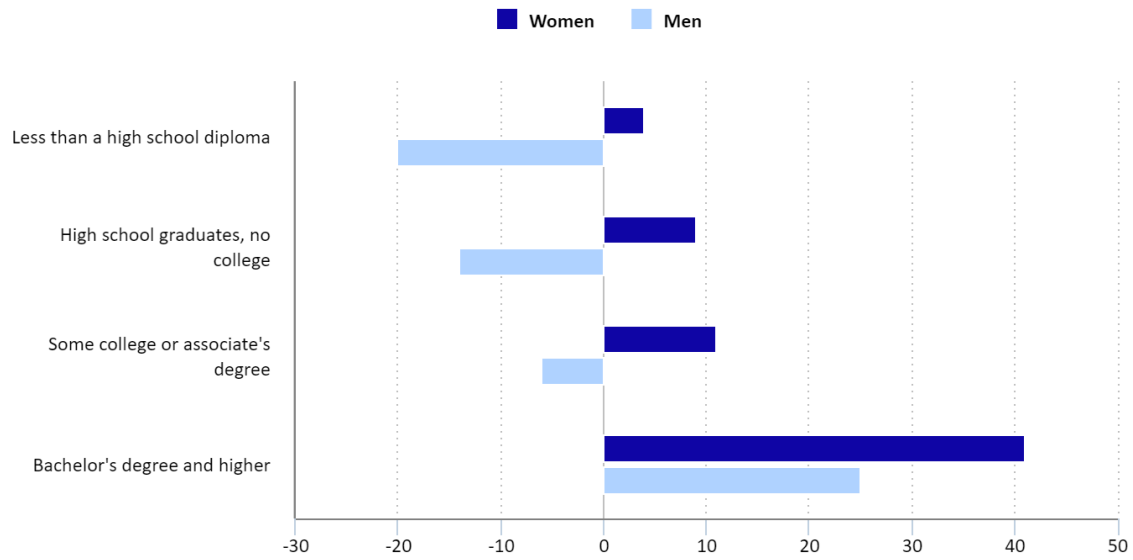
Between 2000 and 2019, inflation-adjusted earnings for Asian women and men remained on an upward trend, with earnings increasing somewhat less for women than men (26 percent and 31 percent, respectively). (Data for Asians are not available prior to 2000.) Median earnings estimates for Asian men and women both increased sharply from 2019 to 2020, but again, these increases likely reflect the impact of pandemic-related employment declines on the earnings distributions.

Earnings By Educational Attainment

Median weekly earnings vary significantly by educational attainment. Among all workers age 25 and older, the weekly earnings of those without a high school diploma ($619) were 44 percent of those with a bachelor's degree and higher ($1,421) in 2020. For workers with a high school diploma who had not attended college, median earnings ($781) were 55 percent of those for workers with a bachelor's degree and higher. Those with some college or an associate's degree (median weekly earnings of $903) made 64 percent of what workers with a bachelor's degree and higher made.

In each educational attainment category, the long-term trend in inflation-adjusted earnings has been more favorable for women than for men. The inflation-adjusted earnings of women without a high school diploma changed little (a 4-percent increase) between 1979 and 2020. By contrast, inflation-adjusted earnings for men declined by 20 percent. For those with a bachelor's degree or higher, inflation-adjusted earnings for women have increased by 41 percent since 1979, while earnings for men have risen by 25 percent. (Data refer to workers age 25 and older.)

Chart 4. Percentage change in inflation-adjusted median usual weekly earnings of women and men, by educational attainment, 1979–2020



Note: Data relate to earnings of full-time wage and salary workers age 25 and older.

Earnings By Occupation

Women and men working full time in management, business, and financial operations occupations had higher median weekly earnings than workers in any other major occupational category in 2020 ($1,274 for women and $1,667 for men). Within this category, the highest-earning women were chief executives ($2,051) and computer and information systems managers ($1,910). Men in these two occupation groups earned $2,712 and $2,091, respectively.

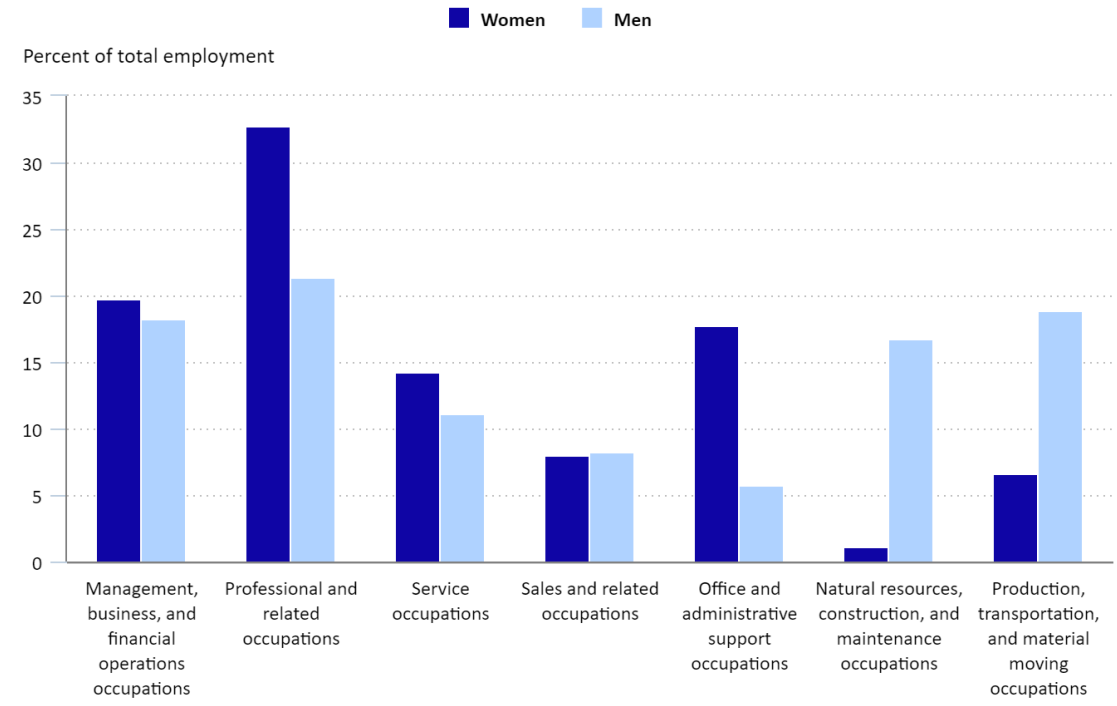
The second-highest paying occupational category for women and men was professional and related occupations ($1,121 for women and $1,532 for men). This is a broad occupational category made up of several distinct job groupings for specialized fields, such as computer science and math, architecture and engineering, law, education, and healthcare. Within this diverse category, women who were pharmacists ($2,160), other physicians ($1,905), and physician assistants ($1,894) had the highest median weekly earnings in 2020. For men, those who were lawyers ($2,324), other physicians ($2,311), and pharmacists ($2,286) earned the most.

Women and men employed in service occupations earned the least in 2020 ($574 for women and $704 for men). Within this category, women who were employed as fast food and counter workers ($470) and food preparation workers ($489) had the lowest median weekly earnings. For men, those who were employed as fast food and counter workers ($462) and cooks ($512) earned the least.

Occupational Distributions of Women and Men

The occupational distributions of female and male full-time workers differ considerably. Compared with men, relatively few women work in natural resources, construction, and maintenance occupations, and women are far more concentrated in office and administrative support jobs.

Chart 5. Distribution of full-time wage and salary employment for women and men, by major occupational group, 2020 annual averages



Women also are more likely than men to work in professional and related occupations. In 2020, 33 percent of women worked in professional and related occupations, compared with 21 percent of men. Within the professional category, though, the proportion of women employed in the higher-paying jobs is much smaller than the proportion of men employed in them. In 2020, 11 percent of women in professional and related occupations were employed in the relatively high-paying computer (median weekly earnings of $1,423 for women and $1,738 for men) and engineering ($1,382 for women and $1,626 for men) occupations, compared with 48 percent of men. Women were over twice as likely to work in education ($1,026 for women and $1,327 for men) and healthcare ($1,153 for women and $1,506 for men) jobs, which generally pay less than computer and engineering jobs. Sixty-six percent of women in professional occupations worked in education and healthcare jobs in 2020, compared with 29 percent of men.

Across all occupational categories, the three most common jobs for women were registered nurse ($1,240), elementary and middle school teacher ($1,085), and secretaries and administrative

assistants ($777). Collectively, these occupations employed 6.3 million women in 2020, representing 13 percent of women in full-time wage and salary jobs.

Among men, the most common job by far was truck driver (driver/sales workers and truck drivers, $916). In 2020, 2.4 million, or 4 percent, of all male full-wage and salary workers were truck drivers. Although engineering jobs are shown separately by specialty (civil, mechanical, etc.) in this report, if combined, engineer would be the second most common job for men. In 2020, a total of 1.8 million men were employed full-time in the 16 designated engineering specialties (median weekly earnings ranging from $1,595 to $1,993).

Earnings For Workers With and Without Children Under 18

In 2020, about one-third of full-time wage and salary workers were parents of children under age 18. (As defined here, "children" include sons, daughters, stepchildren, and adopted children under age 18 who live in the household.) Median weekly earnings for mothers of children under age 18 ($909) were higher than the earnings for women without children under 18 ($882). Earnings for fathers of children under 18, at $1,229, were higher than the earnings of $1,005 for men without children under 18.

Earnings By State of Residence

Median weekly earnings and women's-to-men's earnings ratios vary by state of residence. (In this report, "state" refers to the 50 states and the District of Columbia.) The differences among the states reflect, in part, variation in the occupations and industries found in each state and differences in the demographic composition of each state's labor force. Readers should note that sampling error for the state estimates is considerably larger than it is for the national estimates. (See the technical notes for an explanation of sampling error.) Consequently, earnings comparisons between states should be made with caution. Readers also should note that the state estimates are based on workers' state of residence; their reported earnings are not necessarily from a job located in the same state.

Weekly Work Hours of Full-time Workers

Among full-time workers (that is, those usually working at a job 35 hours or more per week), men are more likely than women to work more than 40 hours per week. In 2020, 23 percent of men who usually work full time worked 41 or more hours per week, compared with 14 percent of women. Women were more likely than men to work 35 to 39 hours per week: 10 percent of women worked such hours in 2020, while 4 percent of men did. A majority of both male (73 percent) and female (76 percent) full-time workers had a 40-hour workweek. Among these workers, women earned 87 percent as much as men. (These percentages are calculated excluding people who usually work 35 or more hours per week and whose hours vary.)

Earnings of Part-time Workers

Women are more likely than men to work part-time—that is, less than 35 hours per week on a sole or main job. Women who worked part-time made up 22 percent of all female wage and

salary workers in 2020. In comparison, 11 percent of men in wage and salary jobs worked part-time.

Median weekly earnings for female part-timers were $309 in 2020, little different than the $305 median for men.

Part-time workers are more likely to be under age 25 than full-time workers. Among part-timers, 29 percent of women and 42 percent of men were under age 25 in 2020. Among full-time workers, 8 percent of women and 9 percent of men were under age 25.

Earnings of Workers Paid By the Hour

In 2020, 58 percent of women and 54 percent of men in wage and salary jobs were paid by the hour. Women who were paid hourly rates had median hourly earnings of $15.22 in 2020, which were 86 percent of the $17.75 median for men.

Among workers who were paid hourly rates in 2020, 2 percent of women and 1 percent of men had hourly earnings at or below the prevailing federal minimum wage of $7.25. See the technical notes for information about BLS estimates of the number of minimum wage workers.

Technical Notes

The estimates in this report were obtained from the Current Population Survey (CPS), which provide information on the labor force, employment, and unemployment. The survey is conducted monthly for the U.S. Bureau of Labor Statistics (BLS) by the U.S. Census Bureau using a scientifically selected national sample of about 60,000 eligible households representing all 50 states and the District of Columbia. The survey data on earnings are based on one-fourth of the CPS monthly sample and are limited to wage and salary workers. All self-employed workers, both incorporated and unincorporated, are excluded from the data presented in this report.

The earnings comparisons in this report are on a broad level and do not control for many factors that can help explain earnings differences. This includes the direct comparisons of earnings levels among demographic groups and the women's-to-men's earnings ratios (that is, women's earnings as a percentage of men's) shown in the tables. For example, the overall ratio of women's-to-men's earnings for full-time workers presented here is not controlled for differences in important determinants of earnings such as age, occupation, and educational attainment. The earnings comparisons in this report are not restricted to workers with otherwise comparable characteristics and comparable jobs. Even controlling for one of the factors may not fully explain earnings differences. Comparisons of women's and men's earnings by detailed occupation, for example, are not simultaneously controlled for differences in key factors such as age, job skills and responsibilities, work experience, and specialization.

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Concepts and Definitions

The principal concepts and definitions used in this report are described briefly below.

Wage and salary workers are people age 16 and older who receive wages, salaries, commissions, tips, payments in kind, or piece rates on their sole or principal job. This group includes employees in both the public and private sectors. All self-employed workers are excluded whether or not their businesses are incorporated.

Full-time workers are defined for the purpose of these estimates as those who usually work 35 hours or more per week at their sole or principal job. The federal Fair Labor Standards Act (FLSA) does not define full- or part-time employment.

Part-time workers are defined for the purpose of these estimates as those who usually work fewer than 35 hours per week at their sole or principal job. The federal Fair Labor Standards Act (FLSA) does not define full- or part-time employment.

Usual weekly earnings reflect earnings before taxes and other deductions and include any overtime pay, commissions, or tips usually received (at the main job in the case of multiple jobholders). Before 1994, survey respondents were asked how much they usually earned per week. Since January 1994, respondents have been asked to identify the easiest way for them to report earnings (hourly, weekly, biweekly, twice monthly, monthly, annually, or other) and how much they usually earn in the reported time period. Earnings reported on a basis other than weekly are converted to a weekly equivalent. The term "usual" is determined by each respondent's own understanding of the term. If the respondent asks for a definition of "usual," interviewers are instructed to define the term as more than half the weeks worked during the past 4 or 5 months.

Median earnings reflect the midpoint in a given earnings distribution, with half of the workers having earnings above the median and the other half having earnings below the median. This applies to both usual weekly and hourly earnings estimates.

The BLS procedure for estimating the median of a weekly earnings distribution places each reported or calculated weekly earnings value into a $50-wide interval that is centered around a multiple of $50. Similarly, for hourly earnings, medians are calculated based on earnings distributions using $0.50-wide intervals that are centered around multiples of $0.50. In both cases, the median is calculated through the linear interpolation of the interval in which the median lies.

Changes over time in the medians for specific groups may not necessarily be consistent with the movements estimated for the overall median boundary. The most common reasons for this possible anomaly are as follows:

There could be a change in the relative weights of the subgroups. For example, the median earnings of 16- to 24-year-olds, and 25 years and older may rise. However, if the lower-earning

16-to-24 age group accounts for a greatly increased share of the total, the overall median could actually fall.

There could be a large change in the shape of the distribution of reported earnings, particularly near a median boundary. This change could be caused by survey observations that are clustered at rounded values, such as $700 or $800. An estimate lying in a $50-wide centered interval containing such a cluster tends to change more slowly than one in other intervals. Consider, for example, the calculation of the median for a multipeaked earnings distribution that shifts over time. As this distribution shifts, the median does not necessarily move at the same rate. Specifically, the median takes relatively more time to move through a frequently reported earnings interval, but once above the upper limit of such an interval, it can move relatively quickly to the next frequently reported interval. BLS procedures for estimating medians mitigate such irregular movements; however, users should be cautious of these effects when evaluating short-term changes in the medians and in ratios of the medians.

Workers paid hourly rates are employed wage and salary workers who report that they are paid by the hour on their job. Typically, workers who are paid an hourly wage have made up approximately 60 percent of all wage and salary workers. Estimates of workers paid by the hour include both full- and part-time workers unless otherwise specified.

Hourly earnings data are for wage and salary workers who are paid by the hour and pertain to earnings from a person's sole or principal job. Hourly earnings for hourly paid workers do not include overtime pay, commissions, or tips received.

Workers paid at or below the federal minimum wage include only workers who are paid hourly rates. Salaried workers and other nonhourly paid workers are excluded, even though some have earnings that, if converted to hourly rates, would be at or below the federal minimum wage.

The estimates of workers paid at or below the federal minimum wage in this report are based solely on whether the hourly wage they report (which does not include overtime pay, tips, or commissions) is at or below the federal minimum wage. Some respondents might round hourly earnings when answering survey questions. As a result, some workers might report having hourly earnings above or below the federal minimum wage when, in fact, they earn the minimum wage.

Some workers who reported earnings below the prevailing federal minimum wage may not be covered by federal or state minimum wage laws because of exclusions and exemptions in the statutes. Thus, the presence of workers with hourly earnings below the federal minimum wage does not necessarily indicate violations of the federal Fair Labor Standards Act (FLSA) or state statutes in cases where such standards apply. The CPS does not include questions on whether workers are covered by the minimum wage provisions of the FLSA or by individual state or local minimum wage laws.

The estimates presented in this report likely understate the actual number of workers with hourly earnings at or below the minimum wage. BLS does not routinely estimate the hourly earnings of

workers not paid by the hour because there are data quality concerns associated with constructing such an estimate.

Regular collection of earnings data in the basic CPS began in 1979. The prevailing federal minimum wage from 1979 to the present is as follows, with the last change occurring in 2009.

Federal minimum wage	Effective date
$2.90	January 1, 1979
$3.10	January 1, 1980
$3.35	January 1, 1981
$3.80	April 1, 1990
$4.25	April 1, 1991
$4.75	October 1, 1996
$5.15	September 1, 1997
$5.85	July 24, 2007
$6.55	July 24, 2008
$7.25	July 24, 2009

When the minimum wage has increased during a given year, the annual average estimates of the number of minimum wage workers reflect both minimum wage levels in effect during the year. For example, data for 2007 reflect the number of workers who earned the federal minimum wage of $5.15 for January to July and the number of workers who earned the minimum wage of $5.85 for August to December.

Race is reported by the household survey respondent. In accordance with the Office of Management and Budget standards, White, Black or African American, and Asian are terms used to describe a person's race. Beginning in 2003, people in these categories are those who selected that race group only. People who identify more than one race are tabulated separately in the category Two or More Races. Before 2003, people identified one group as their main race. For more information on the 2003 changes to questions on race, see "Revisions to the Current Population Survey Effective in January 2003." Data for other race groups—American Indians and Alaska Natives, Native Hawaiians and Other Pacific Islanders—and for people of Two or More Races are included in totals but not separately identified in this report because the number of survey respondents is too small to develop estimates of acceptable reliability.

Hispanic or Latino ethnicity refers to people who identified themselves in the survey process as being of Hispanic, Latino, or Spanish origin. People who identify themselves as Hispanic or Latino ethnicity may be of any race and are included in estimates for the race groups (White, Black or African American, and Asian) in addition to being shown separately.

Married, spouse present refers to people in either opposite-sex or same-sex marriages living together in the same household, even though one spouse may be temporarily absent on business, on vacation, on a visit, in a hospital, or for other reasons.

Other marital status refers to people who never married; and those who are widowed; divorced; separated; and married, spouse absent. Separated includes people with legal separations, those living apart with intentions of obtaining a divorce, and other people permanently or temporarily separated because of marital discord. Married, spouse absent, includes married people living apart because either the husband or wife was employed and living at a considerable distance from home, was serving away from home in the Armed Forces, had moved to another area, or had a different place of residence for any other reason except those listed in the separated definition above.

Inflation-adjusted earnings shown in this report use the Consumer Price Index research series using current methods (CPI-U-RS) to convert current dollars to constant, or inflation-adjusted, dollars. BLS has made numerous improvements to the Consumer Price Index (CPI) over the years. Although these improvements make the CPI more accurate, the histories of official CPI series are not adjusted to reflect the improvements. Because many researchers need a historical series that measures price change consistently over time, BLS developed the CPI-U-RS to provide an estimate of the CPI that incorporates most of the methodological improvements made since 1978 into the entire series. For further information, see the CPI research series webpage.

This report uses the most recent version of the CPI-U-RS available at the time of production. Users should note that the CPI-U-RS is subject to periodic revision. As a result, the rate of inflation incorporated into the inflation-adjusted median earnings estimates in this report may differ from the rate used in previous reports in this series or in other publications.

Reliability

Statistics based on the CPS are subject to both sampling and non-sampling error. When a sample, rather than the entire population, is surveyed, there is a chance that the sample estimates may differ from the true population values they represent. The component of this difference that occurs because samples differ by chance is known as sampling error, and its variability is measured by the standard error of the estimate. There is about a 90-percent chance, or level of confidence, that an estimate based on a sample will differ by no more than 1.645 standard errors from the true population value because of sampling error. BLS analyses are generally conducted at the 90-percent level of confidence.

Readers should be aware that because of sampling error, apparent differences between estimates for two or more groups or categories may not be statistically significant, and therefore not meaningfully different from one another. Standard errors are shown with many of the median earnings estimates in this report to help readers evaluate differences in earnings estimates.

The CPS data also are affected by non-sampling error. Non-sampling error can occur for many reasons, including the failure to sample a segment of the population, inability to obtain information on all respondents in the sample, inability or unwillingness of respondents to provide

correct information, and errors made in the collection or processing of the data. Further information about the reliability of data from the CPS is available on the CPS Technical Documentation page of the BLS website.

7.4: Highlights of Women's Earnings in 2020 is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

7.5: Case Study: Charlotte Security Provider to Pay $155k to Settle EEOC Same-Sex Sexual Harassment / Retaliation Suit

Male Supervisor Subjected Male Employees to Sexual Touching and Comments, Federal Agency Charged

CHARLOTTE, N.C. - Metro Special Police & Security Services, Inc., a Charlotte-based provider of private security and public safety services, will pay $155,000 and provide other relief to settle a sexual harassment and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

According to the EEOC's suit, Officers James Pedersen, Eric Steele, Daniel Griffis, and a class of similarly situated male employees were subjected to sexual harassment by a male captain and a male lieutenant employed by the company. The EEOC said that the male employees were subjected to a variety of misconduct, including: the captain making offensive sexual comments to his male subordinate employees; soliciting nude pictures from them; asking a male employee to undress in front of him; and soliciting male employees for sex. The captain and lieutenant also allegedly forced male employees to accompany them to a gay strip club while on duty. The complaint further alleged that the captain touched the chests and genitals of some of the male employees and offered promotions to certain male employees in exchange for sex.

Such alleged conduct violates Title VII of the Civil Rights Act of 1964. The EEOC filed suit (*Equal Employment Opportunity Commission v. Metro Special Police & Security Services, Inc.*, Civ. No. 3:13-CV-00039-RJC-DCK) in U.S. District Court for the Western District of North Carolina, Charlotte Division after first attempting to reach a pre-litigation settlement through its conciliation process.

In addition to monetary damages, the five-year consent decree resolving the lawsuit includes injunctive relief prohibiting the company from further discriminating on the basis of sex, and from retaliating against employees who resist unlawful discrimination or complain about it. The decree also requires the company to revise its sexual harassment policy and distribute the revised policy to all employees and to conduct annual training on sexual harassment and retaliation. Finally, the company must report complaints of sexual harassment to the EEOC throughout the decree's five-year term.

"All workers have the right to work in an environment free from sexual harassment," said Lynette A. Barnes, regional attorney for the EEOC's Charlotte District. "No one should have to put up with sexual comments or touching while they are just trying to make a living. Employers need to halt or prevent it - and the best prevention is training supervisors and managers on how to put a stop to such misconduct as soon as it appears."

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on the agency's website at www.eeoc.gov.

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7.6: Video: What It’s Like To Be a Transgender Dad

LB Hannahs candidly shares the experience of parenting as a genderqueer individual—and what it can teach us about authenticity and advocacy. "Authenticity doesn't mean 'comfortable.' It means managing and negotiating the discomfort of everyday life," Hannahs says.

https://www.youtube.com/watch?v=vVx39Jv6PFM

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8.1: Family and Medical Leave Act of 1993

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Eligible employees are entitled to:

- Twelve workweeks of leave in a 12-month period for:
    - the birth of a child and to care for the newborn child within one year of birth;
    - the placement with the employee of a child for adoption or foster care and to care for the newly placed child within one year of placement;
    - to care for the employee's spouse, child, or parent who has a serious health condition;
    - a serious health condition that makes the employee unable to perform the essential functions of his or her job;
    - any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty;" **or**
- Twenty-six workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

On July 16, 2020, Wage and Hour Division announced a Request for Information (RFI) to be published in the Federal Register seeking the public's feedback on the administration and use of the law. Learn more about the RFI on FMLA.

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8.2: Work Family Balance and Employer Best Practices

Commission Hears from Broad Range of Expert Panelists at Public Meeting

WASHINGTON - The U.S. Equal Employment Opportunity Commission (EEOC) today held a public meeting focusing on employer best practices to achieve work/family balance, and issued a guidance document on how agency-enforced laws apply to workers with caregiving responsibilities.

The new guidance is being issued by the EEOC as a proactive measure to address an emerging discrimination issue in the 21st-century workplace. The document, *Unlawful Disparate Treatment of Workers with Caregiving Responsibilities*, provides examples under which discrimination against a working parent or other caregiver may constitute unlawful disparate treatment under Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990 (ADA). The guidance notes that changing workplace demographics, including women's increased participation in the labor force, have created the potential for greater discrimination against working parents and others with caregiving responsibilities, such as eldercare, all of which may vary by gender, race, or ethnicity.

"With this new guidance, the Commission is clarifying how the federal EEO laws apply to employees who struggle to balance work and family," said agency Vice Chair Leslie E. Silverman. "Fortunately, many employers have recognized employees' need to balance work and family, and have responded in very positive and creative ways."

The guidance, available online at www.eeoc.gov/policy/docs/caregiving.html along with a question and answer fact sheet, states: This document is not intended to create a new protected category but rather to illustrate circumstances in which stereotyping or other forms of disparate treatment may violate Title VII or the prohibition under the ADA against discrimination based on a worker's association with an individual with a disability.

A wide range of circumstances are highlighted in the guidance, including: sex-based stereotyping and subjective decision making regarding working mothers; assumptions about pregnant workers; discrimination against working fathers and women of color; stereotyping based on association with an individual with a disability; and hostile work environments affecting caregivers. The guidance is intended to assist employers, employees, and EEOC staff alike.

Commissioner Stuart J. Ishimaru said, "This guidance recognizes the connection between parenthood, especially motherhood, and employment discrimination. An employer may violate Title VII when it takes actions or limits opportunities for employees because of beliefs that the employer has about mothers and caretakers that are linked to sex."

In addition to issuance of the guidance, the Commission heard from a wide range of expert panelists at the meeting who discussed best practices by employers to balance family-friendly workplaces with legitimate business needs.

Vice Chair Silverman said she was glad to learn more about the positive steps that many employers are taking to address work/life balance issues. "I'm very happy that we can showcase

the many ways in which progressive employers go above and beyond the requirements of the law and make it possible for employees to successfully balance the demands of the workplace with their family responsibilities."

Donna Klein, president and founder of Corporate Voices for Working Families, discussed a series of reports issued by her organization on job flexibility for lower-wage workers and highlighted several Fortune 500 companies that have implemented best practices in this area.

"As companies realize the financial benefits of focusing on the needs of lower-wage workers, more and more companies are making the effort and reaping the long-term reward of work/life policies and programs", Klein said. The benefits to employers, she said, include boosting productivity, reducing staff turnover, increasing employee commitment to the organization, and reducing absenteeism due to child care and other issues.

Dr. Anika Warren, research director of Catalyst, Inc., spoke of the unique challenges faced by women of color in achieving a work/family balance. She highlighted her organization's research, workforce statistics, and literature in making the business case for work/life programs focusing on women of color including African Americans, Hispanics, Asian/Pacific Islanders, and Native Americans/Alaskan Natives.

Pointing out that women of color are the fastest-growing segment of the workforce, Warren said employers should consider that tapping into diverse talent, such as women of color, through effective and inclusive organization policies and practices is a competitive advantage that attracts, retains, and advances employees while also facilitating the business success of the organization.

Horacio D. Rozanski, vice president and chief personnel officer of global consulting firm Booz Allen Hamilton, said "by necessity or choice, many women often take off-ramps and side routes from the traditional career path and have a hard time maintaining continuous, cumulative lockstep employment, which is a necessary condition for success within the confines of the linear white male competitive model."

Rozanski, a member of the Hidden Brain Drain Task Force, which is comprised of 35 international corporations representing more than 2.5 million employees in 152 countries, said: "The current model of work is at a turning point. With jobs and careers becoming more extreme by the minute, rethinking the old model has huge potential to burnish companies' competitive edge and restore hope and greater productivity to women's lives."

A complete list of panelists, along with their bios and prepared testimony, is available on the EEOC's website at www.eeoc.gov/abouteeoc/meetings/5-23-07/index.html.

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the agency is available online at www.eeoc.gov.

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8.3: Employment Projections

Total employment is projected to grow from 153.5 million to 165.4 million over the 2020–30 decade, an increase of 11.9 million jobs, the U.S. Bureau of Labor Statistics reported today. This increase reflects an annual growth rate of 0.7 percent, which is higher than recent projections cycles and accounts for recovery from low base-year employment for 2020 due to the COVID-19 pandemic and its associated recession. Employment in the leisure and hospitality sector is projected to increase the fastest, largely driven by recovery growth, while the healthcare and social assistance sector is projected to add the most new jobs. Among occupational groups, healthcare support occupations are projected for the fastest job growth. Real Gross Domestic Product (GDP) is projected to grow 2.3 percent annually from 2020 to 2030, relatively quickly compared to the prior two decades, when GDP grew 1.7 percent annually. Meanwhile, labor productivity also is projected to increase, from 1.1 percent annually over the 2010–2020 decade to 1.7 percent annually from 2020 to 2030.

OCCUPATIONAL OUTLOOK HANDBOOK

The BLS projections are the foundation of the Occupational Outlook Handbook (OOH), one of the nation's most widely used career information resources. The OOH reflects BLS employment projections for the 2020–30 decade. The updated OOH is available online at www.bls.gov/ooh.

EFFECTS OF THE COVID-19 PANDEMIC ON THE 2020-30 PROJECTIONS

The COVID-19 pandemic triggered an economic recession from February to April 2020, which led to substantial and immediate declines in output and employment. Because 2020 serves as the base year for the 2020–30 projections, these recession impacts translate to lower base-year values than seen in recent projections and, therefore, higher projected employment growth.

Many industries are expected to experience cyclical recoveries in the earlier part of the projections decade as industry output and employment normalize, returning to their long-term growth patterns. Projected robust growth for industries in which employment fell in 2020 also is projected to result in strong growth for the occupations employed by those industries.

In addition, some industries and occupations are projected to have altered long-term structural demand arising from economic changes spurred by the pandemic (see Technical Note for discussion of the difference between cyclical and structural changes). For example, many computer-related occupations are expected to have elevated long-term demand, in part due to demands for telework computing infrastructure and IT security. Conversely, retail trade is projected to experience an amplification of its long-term decline, because brick-and-mortar retail is projected to lose employment to e-commerce as those spending habits from the pandemic persist long-term.

Fast growth rates in this projections set generally can be categorized as either predominantly cyclically driven, long-term structurally driven, or a combination of a recovery from a low base point and additional growth due to long-run structural drivers.

BLS developed alternate employment projections scenarios for the 2019–29 projections decade that encompassed possible impacts from the pandemic. An analysis of these scenarios is available in the Monthly Labor Review (MLR) article "Employment projections in a pandemic environment." BLS will publish a follow-up analysis comparing the alternate projections to the 2020–30 projections in a Fall 2021 MLR article.

Highlights of the BLS projections for the labor force, macroeconomy, industry employment, and occupational employment are included below.

Population and Labor Force

- The civilian non-insitutional population growth rate is projected to decline slightly, from 0.9 percent annually in 2010–20 to 0.8 percent annually in 2020–30. This declining growth rate nonetheless results in an increase of 20.8 million over the 2020–30 projections decade, to a level of 281.1 million. By comparison, the population increased by 22.5 million from 2010 to 2020.
- The labor force is expected to increase by 8.9 million, from 160.7 million in 2020 to 169.6 million in 2030. The labor force participation rate is projected to decline, from 61.7 percent in 2020 to 60.4 percent in 2030. The decline in labor force participation is due to the aging of the baby-boom generation, a continuation of the declining trend in men's participation, and a slight decline in women's participation.
- By 2030, all baby boomers will be at least 65 years old. The increasing share of people ages 65 and older contributes to a projected labor force growth rate that is slower than much of recent history, as well as a continued decline in the labor force participation rate, because older people have lower participation rates compared with younger age groups.

Macroeconomy

- Real Gross Domestic Product (GDP) is projected to continue growing during the 2020–30 decade at 2.3 percent annually compounded through the projections decade, reflecting recovery growth from the low 2020 base-year GDP.
- Due in part to a projected increase in the capital-to-labor ratio, productivity is expected to grow at an annual rate of 1.7 percent from 2020 to 2030. This projected growth is faster than the 1.1 percent historical growth that occurred from 2010 to 2020. This rebound in productivity over the projections decade represents a growth rate more in line with the long-term historical pattern.

Industry Employment

- Total employment is projected to grow 7.7 percent over the 2020–30 projections decade, in part reflecting recovery growth from the low 2020 base-year employment.
- Employment in leisure and hospitality is projected to grow the fastest among all sectors over the 2020–30 decade, accounting for 7 of the 20 fastest growing industries (employment change for industries references wage and salary employment). This growth is largely driven by recovery from the pandemic, as restaurants, hotels, and arts, cultural, and recreational related establishments with low 2020 base-year employment levels see restored demand from the public resuming recreational and in-person activities.
- Employment in healthcare and social assistance is projected to add the most jobs of all industry sectors, about 3.3 million jobs over 2020–30. Within healthcare, employment in the individual and family services industry is projected to increase the fastest, with an annual growth rate of

3.3 percent. Factors that are expected to contribute to the large increase include rising demand for the care of an aging baby-boom population, longer life expectancies, and continued growth in the number of patients with chronic conditions.

- Technological advancements are expected to support strong employment growth in professional, business, and scientific services industries, including computer systems design and related services (2.1 percent projected annual employment growth from 2020–30) as well as management, scientific, and technical consulting services (2.0 percent).
- Retail trade is projected to lose 586,800 jobs over the 2020–30 decade, the most of any sector. As e-commerce continues to grow in popularity, accelerated by spending patterns in the COVID-19 pandemic, demand for brick-and-mortar retail establishments is expected to decline.
- While the manufacturing sector as a whole is projected to have some recovery-driven employment growth, it also contains 11 of the 20 industries projected to have the most rapid employment declines. Factors contributing to the loss of manufacturing jobs include continued global competition and adoption of productivity-enhancing technologies, such as robotics.

Occupational Employment

- Healthcare support occupations are projected for the fastest employment growth among all occupational groups. Personal care and service occupations and food preparation and serving related occupations are also projected for rapid employment growth, mainly due to recovery growth following low 2020 base-year employment.
- Healthcare occupations and those associated with healthcare (including mental health) account for 7 of the 30 fastest-growing occupations from 2020 to 2030. Demand for healthcare services, from both aging baby boomers and from people who have chronic conditions, will drive the projected employment growth.
- Motion picture projectionists; ushers, lobby attendants, and ticket takers; and restaurant cooks are among the fastest-growing occupations due to their expected cyclical recovery. Employment of these occupations is concentrated in industries that saw substantial employment losses in 2020 and are projected for large recovery growth over the projections decade.
- Several of the fastest-growing healthcare occupations—including nurse practitioners, physical therapist assistants, and physician assistants—are projected to see strong demand as team-based healthcare models are increasingly used to deliver healthcare services.
- Computer and mathematical occupations are expected to see fast employment growth as strong demand is expected for IT security and software development, in part due to increased prevalence of telework spurred by the COVID-19 pandemic. Demand for new products associated with the Internet of Things (IoT), and for analyzing and interpreting large datasets are also expected to contribute to fast employment growth for these occupations, which include statisticians, information security analysts, and data scientists.
- Technological changes facilitating increased automation are expected to result in declining employment for office and administrative support occupations, sales occupations, and production occupations.

More Information

The Occupational Outlook Handbook (OOH) includes information about more than 500 detailed occupations in over 300 occupational profiles, covering about 4 out of 5 jobs in the economy.

Each profile features the 2020–30 projections, along with assessments of the job outlook, work activities, wages, education and training requirements, and more.

- The OOH is available online at www.bls.gov/ooh.
- New field of degree pages are available online at www.bls.gov/ooh/field-of-degree/home.htm.
- Detailed information on the 2020–30 projections will appear in the Monthly Labor Review in Fall 2021.
- Tables with detailed, comprehensive statistics used in preparing the projections are available online at www.bls.gov/emp/tables.htm.
- Definitions for terms used in this news release are available in the BLS Glossary at www.bls.gov/bls/glossary.htm.

Information from this news release will be made available to sensory impaired individuals upon request. Voice phone: (202) 691-5200; Federal Relay Services: 1 (800) 877-8339.

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8.4: Flexible Schedules

A flexible work schedule is an alternative to the traditional 9 to 5, 40-hour workweek. It allows employees to vary their arrival and/or departure times. Under some policies, employees must work a prescribed number of hours a pay period and be present during a daily "core time." The Fair Labor Standards Act (FLSA) does not address flexible work schedules. Alternative work arrangements such as flexible work schedules are a matter of agreement between the employer and the employee (or the employee's representative). The U.S. Department of Labor has conducted numerous surveys and published articles and reports on the subject.

Webpages on this Topic

- "When Can an Employee's Scheduled Hours of Work Be Changed?"
    - Information about work hours from the elaws FLSA Advisor.
- Coverage Under the Fair Labor Standards Act (FLSA) Fact Sheet
    - General information about who is covered by the FLSA.
- Workers on Flexible and Shift Schedules
- Article: "Incidence of Flexible Work Schedules Increases"
    - A Bureau of Labor Statistics (BLS) Monthly Labor Review article stating that from 1991 to 1997, the percentage of full-time wage and salary workers with flexible work schedules on their principal job increased from 15.1 percent to 27.6 percent.
- Article: "Flexible Schedules and Shift Work: Replacing the '9-To-5' Workday?"
    - Article from BLS' Monthly Labor Review Online.
- Article: "Over One-Quarter of Full-time Workers Have Flexible Schedules"
    - More information on flexible schedules.
- Article: "Flexible Work Schedules: What Are We Trading Off to Get Them?"
    - More information on flexible schedules.
- Article: "Executives most likely to have flexible work hours"
    - More information on flexible schedules.
- Index of BLS Reports on Workers on Flexible and Shift Schedules
    - A report from the Bureau of Labor Statistics on the trend towards flexible work schedules.

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8.5: Work at Home/Telework as a Reasonable Accommodation

Many employers have discovered the benefits of allowing employees to work at home through telework (also known as telecommuting) programs. Telework has allowed employers to attract and retain valuable workers by boosting employee morale and productivity. Technological advancements have also helped increase telework options. President George W. Bush's New Freedom Initiative emphasizes the important role telework can have for expanding employment opportunities for persons with disabilities.

In its 1999 *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act (revised 10/17/02)*, the Equal Employment Opportunity Commission said that allowing an individual with a disability to work at home may be a form of reasonable accommodation. The Americans with Disabilities Act (ADA) requires employers with 15 or more employees to provide reasonable accommodation for qualified applicants and employees with disabilities. Reasonable accommodation is any change in the work environment or in the way things are customarily done that enables an individual with a disability to apply for a job, perform a job, or gain equal access to the benefits and privileges of a job. The ADA does not require an employer to provide a specific accommodation if it causes undue hardship, *i.e.*, significant difficulty or expense.

Not all persons with disabilities need - or want - to work at home. And not all jobs can be performed at home. But, allowing an employee to work at home may be a reasonable accommodation where the person's disability prevents successfully performing the job on-site and the job, or parts of the job, can be performed at home without causing significant difficulty or expense.

This fact sheet explains the ways that employers may use existing telework programs or allow an individual to work at home as a reasonable accommodation.

1. **Does the ADA require employers to have telework programs?**

   No. The ADA does not require an employer to offer a telework program to all employees. However, if an employer does offer telework, it must allow employees with disabilities an equal opportunity to participate in such a program.

   In addition, the ADA's reasonable accommodation obligation, which includes modifying workplace policies, might require an employer to waive certain eligibility requirements or otherwise modify its telework program for someone with a disability who needs to work at home. For example, an employer may generally require that employees work at least one year before they are eligible to participate in a telework program. If a new employee needs to work at home because of a disability, and the job can be performed at home, then an employer may have to waive its one-year rule for this individual.

2. **May permitting an employee to work at home be a reasonable accommodation, even if the employer has no telework program?**

Yes. Changing the location where work is performed may fall under the ADA's reasonable accommodation requirement of modifying workplace policies, even if the employer does not allow other employees to telework. However, an employer is not obligated to adopt an employee's preferred or requested accommodation and may instead offer alternate accommodations as long as they would be effective. (See Question 6.)

3. **How should an employer determine whether someone may need to work at home as a reasonable accommodation?**

This determination should be made through a flexible "interactive process" between the employer and the individual. The process begins with a request. An individual must first inform the employer that s/he has a medical condition that requires some change in the way a job is performed. The individual does not need to use special words, such as "ADA" or "reasonable accommodation" to make this request, but must let the employer know that a medical condition interferes with his/her ability to do the job.

Then, the employer and the individual need to discuss the person's request so that the employer understands why the disability might necessitate the individual working at home. The individual must explain what limitations from the disability make it difficult to do the job in the workplace, and how the job could still be performed from the employee's home. The employer may request information about the individual's medical condition (including reasonable documentation) if it is unclear whether it is a "disability" as defined by the ADA. The employer and employee may wish to discuss other types of accommodations that would allow the person to remain full-time in the workplace. However, in some situations, working at home may be the only effective option for an employee with a disability.

4. **How should an employer determine whether a particular job can be performed at home?**

An employer and employee first need to identify and review all of the essential job functions. The essential functions or duties are those tasks that are fundamental to performing a specific job. An employer does not have to remove any essential job duties to permit an employee to work at home. However, it may need to reassign some minor job duties or marginal functions (i.e., those that are not essential to the successful performance of a job) if they cannot be performed outside the workplace and they are the only obstacle to permitting an employee to work at home. If a marginal function needs to be reassigned, an employer may substitute another minor task that the employee with a disability could perform at home in order to keep employee workloads evenly distributed.

After determining what functions are essential, the employer and the individual with a disability should determine whether some or all of the functions can be performed at home. For some jobs, the essential duties can only be performed in the workplace. For example, food servers, cashiers, and truck drivers cannot perform their essential duties from home. But, in many other jobs some or all of the duties can be performed at home.

Several factors should be considered in determining the feasibility of working at home, including the employer's ability to supervise the employee adequately and whether any duties require use of certain equipment or tools that cannot be replicated at home. Other critical considerations include whether there is a need for face-to-face interaction and coordination of work with other employees; whether in-person interaction with outside colleagues, clients, or customers is necessary; and whether the position in question requires the employee to have immediate access to documents or other information located only in the workplace. An employer should not, however, deny a request to work at home as a reasonable accommodation solely because a job involves some contact and coordination with other employees. Frequently, meetings can be conducted effectively by telephone and information can be exchanged quickly through e-mail.

If the employer determines that some job duties must be performed in the workplace, then the employer and employee need to decide whether working part-time at home and part-time in the workplace will meet both of their needs. For example, an employee may need to meet face-to-face with clients as part of a job, but other tasks may involve reviewing documents and writing reports. Clearly, the meetings must be done in the workplace, but the employee may be able to review documents and write reports from home.

5. **How frequently may someone with a disability work at home as a reasonable accommodation?**

An employee may work at home only to the extent that his/her disability necessitates it. For some people, that may mean one day a week, two half-days, or every day for a particular period of time (e.g., for three months while an employee recovers from treatment or surgery related to a disability). In other instances, the nature of a disability may make it difficult to predict precisely when it will be necessary for an employee to work at home. For example, sometimes the effects of a disability become particularly severe on a periodic but irregular basis. When these flare-ups occur, they sometimes prevent an individual from getting to the workplace. In these instances, an employee might need to work at home on an "as needed" basis, if this can be done without undue hardship.

As part of the interactive process, the employer should discuss with the individual whether the disability necessitates working at home full-time or part-time. (A few individuals may only be able to perform their jobs successfully by working at home full time.) If the disability necessitates working at home part-time, then the employer and employee should develop a schedule that meets both of their needs. Both the employer and the employee should be flexible in working out a schedule so that work is done in a timely way, since an employer does not have to lower production standards for individuals with disabilities who are working at home. The employer and employee also need to discuss how the employee will be supervised.

6. **May an employer make accommodations that enable an employee to work full-time in the workplace rather than granting a request to work at home?**

Yes, the employer may select any effective accommodation, even if it is not the one preferred by the employee. Reasonable accommodations include adjustments or changes to the workplace, such as: providing devices or modifying equipment, making workplaces accessible (e.g., installing a ramp), restructuring jobs, modifying work schedules and policies, and providing qualified readers or sign language interpreters. An employer can provide any of these types of reasonable accommodations, or a combination of them, to permit an employee to remain in the workplace. For example, an employee with a disability who needs to use paratransit asks to work at home because the paratransit schedule does not permit the employee to arrive before 10:00 a.m., two hours after the normal starting time. An employer may allow the employee to begin his or her eight-hour shift at 10:00 a.m., rather than granting the request to work at home, if this would work with the paratransit schedule.

7. **How can employers and individuals with disabilities learn more about reasonable accommodation, including working at home?**

   Employers and individuals with disabilities wishing to learn more about working at home as a reasonable accommodation can contact the EEOC at (202) 921-2539 (voice) and (202) 663-7026 (TTY). General information about reasonable accommodation can be found on EEOC's website, www.eeoc.gov/laws/guidance/enforcement-guidance-reasonable-accommodation-and-undue-hardship-under-ada (Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act; revised 10/17/02). This website also provides guidances on many other aspects of the ADA.

   The government-funded Job Accommodation Network (JAN) is a free service that offers employers and individuals ideas about effective accommodations. The counselors perform individualized searches for workplace accommodations based on a job's functional requirements, the functional limitations of the individual, environmental factors, and other pertinent information. JAN can be reached at 1-800-526-7234 (voice or TDD); or at www.jan.wvu.edu/soar.

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8.6: Pregnancy and Workplace Laws

Pregnancy discrimination involves treating a woman (an applicant or employee) unfavorably because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth.

Pregnancy Discrimination and Work Situations

The Pregnancy Discrimination Act (PDA) forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment.

Pregnancy Discrimination and Temporary Disability

If a woman is temporarily unable to perform her job due to a medical condition related to pregnancy or childbirth, the employer or other covered entity must treat her in the same way as it treats any other temporarily disabled employee. For example, the employer may have to provide light duty, alternative assignments, disability leave, or unpaid leave to pregnant employees if it does so for other temporarily disabled employees.

Additionally, impairments resulting from pregnancy (for example, gestational diabetes or preeclampsia, a condition characterized by pregnancy-induced hypertension and protein in the urine) may be disabilities under the Americans with Disabilities Act (ADA). An employer may have to provide a reasonable accommodation (such as leave or modifications that enable an employee to perform her job) for a disability-related to pregnancy, absent undue hardship (significant difficulty or expense). The ADA Amendments Act of 2008 makes it much easier to show that a medical condition is a covered disability. For more information about the ADA, see http://www.eeoc.gov/laws/types/disability.cfm. For information about the ADA Amendments Act, see http://www.eeoc.gov/laws/types/disability_regulations.cfm.

Pregnancy Discrimination and Harassment

It is unlawful to harass a woman because of pregnancy, childbirth, or a medical condition related to pregnancy or childbirth. Harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted). The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Pregnancy, Maternity and Parental Leave

Under the PDA, an employer that allows temporarily disabled employees to take disability leave or leave without pay, must allow an employee who is temporarily disabled due to pregnancy to do the same.

An employer may not single out pregnancy-related conditions for special procedures to determine an employee's ability to work. However, if an employer requires its employees to submit a doctor's statement concerning their ability to work before granting leave or paying sick benefits, the employer may require employees affected by pregnancy-related conditions to submit such statements.

Further, under the Family and Medical Leave Act (FMLA) of 1993, a new parent (including foster and adoptive parents) may be eligible for 12 weeks of leave (unpaid or paid if the employee has earned or accrued it) that may be used for care of the new child. To be eligible, the employee must have worked for the employer for 12 months prior to taking the leave and the employer must have a specified number of
employees. See http://www.dol.gov/whd/regs/compliance/whdfs28.htm.

Pregnancy and Workplace Laws

Pregnant employees may have additional rights under the Family and Medical Leave Act (FMLA), which is enforced by the U.S. Department of Labor. Nursing mothers may also have the right to express milk in the workplace under a provision of the Fair Labor Standards Act enforced by the U.S. Department of Labor's Wage and Hour
Division. See http://www.dol.gov/whd/regs/compliance/whdfs73.htm.

For more information about the Family Medical Leave Act or break time for nursing mothers, go to http://www.dol.gov/whd, or call 202-693-0051 or 1-866-487-9243 (voice), 202-693-7755 (TTY).

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8.7: Case Study: AMR to Pay $162,500 to Settle EEOC Pregnancy Discrimination Lawsuit

Ambulance Company Refused Reasonable Accommodation to Pregnant Paramedic, Federal Agency Charged

SPOKANE, Wash. — Nationwide medical transportation company American Medical Response Ambulance Service, Inc. (AMR) will pay $162,500 and provide other relief to settle a federal pregnancy discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

According to the EEOC's suit, a paramedic, who worked for AMR in Spokane, Wash., requested light duty for the last part of her pregnancy and supplied a doctor's note in support. AMR denied her request. Rather than give her the light-duty tasks it made available to its employees injured on the job, AMR directed the paramedic to take unpaid leave or work without any restrictions.

Refusing to provide light duty to a pregnant employee when similarly abled, non-pregnant employees are permitted light-duty violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act (PDA). After an investigation by the EEOC and after first attempting to reach a pre-litigation settlement through its conciliation process, the EEOC filed suit in U.S. District Court for the Eastern District of Washington (Case No.2:19-CV-00258-RMP). The employee intervened in the EEOC's lawsuit after it was filed, bringing additional claims under federal and state law.

The two-and-one-half-year consent decree settling the lawsuit provides $162,500 in compensatory damages to the paramedic. The decree also requires AMR to provide anti-discrimination training on Title VII and the PDA to all its Washington supervisors, safety and human resources personnel, and employees at AMR's Spokane facilities. AMR must revise its policies and procedures for Title VII compliance and post a notice for employees describing the company's obligations under the consent decree and employee rights under Title VII and the PDA.

"An employer must accommodate pregnant employees to the same extent that it accommodates other employees similar in their ability or inability to work," said EEOC Senior Trial Attorney May Che. "Pregnant workers should not be forced to choose between losing the ability to make a living and risking the health and safety of their baby by being required to work without accommodation."

EEOC San Francisco Deputy Director Nancy Sienko added, "Pregnancy discrimination continues to be a persistent problem in the American workforce. Combating such unlawful conduct is a top priority for the EEOC and we will continue working to prevent and remedy it."

AMR is a medical transportation company that provides and manages community-based medical transportation services, including emergency (911), non-emergency and managed transportation, fixed-wing air ambulance and disaster response. According to its website, https://www.amr.net/about, AMR is the largest ambulance service provider in the nation, with locations throughout the United States. In March 2018, AMR became a subsidiary of Global Medical Response, the largest medical transportation company in the world.

One of the six national priorities identified by the EEOC's Strategic Enforcement Plan (SEP) is to address emerging and developing issues in equal employment law, including accommodating pregnancy-related limitations.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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8.8: Family

- 8.8.1: Introduction to Marriage and Family
- 8.8.2: What Is Marriage? What Is a Family?
- 8.8.3: Variations in Family Life
- 8.8.4: Challenges Families Face

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8.8.1: Introduction to Marriage and Family

Figure 8.8.1.1: What constitutes a family nowadays? (Photo courtesy of Michael/flickr)

Rebecca and John were having a large church wedding attended by family and friends. They had been living together their entire senior year of college and planned on getting married right after graduation.

Rebecca's parents were very traditional in their life and family. They had married after college at which time Rebecca's mother was a stay-at-home mother and Rebecca's father was a Vice President at a large accounting firm. The marriage was viewed as very strong by outsiders.

John's parents had divorced when John was five. He and his younger sister lived with his financially struggling mother. The mother had a live-in boyfriend that she married when John was in high school. The Asian stepfather was helpful in getting John summer jobs and encouraged John to attend the local community college before moving to the four-year university.

Rebecca's maid of honor, Susie, attended college with Rebecca but had dropped out when finding out she was pregnant. She chose not to marry the father and was currently raising the child as a single parent. Working and taking care of the child made college a remote possibility.

The best man, Brad, was in and out of relationships. He was currently seeing a woman with several children of different parentage. The gossip had this relationship lasting about the same amount of time as all the previous encounters.

Rebecca and John had a gay couple as ushers. Steve and Roger had been in a monogamous relationship for almost ten years, had adopted a minority daughter and were starting a web-based business together. It was obvious they both adored their child, and they planned on being married at a Washington destination ceremony later in the year.

This scenario may be complicated, but it is representative of the many types of families in today's society.

Between 2006 and 2010, nearly half of heterosexual women (48 percent) ages fifteen to forty-four said they were not married to their spouse or partner when they first lived with them, the report says. That's up from 43 percent in 2002, and 34 percent in 1995 (Rettner 2013). The U.S. Census Bureau reports that the number of unmarried couples has grown from fewer than one million in the 1970s to 8.1 million in 2011. Cohabitating, but unwed, couples account for 10 percent of all opposite-sex couples in the United States (U.S. Census Bureau 2008). Some may never choose to wed (Gardner 2013). With fewer couples marrying, the traditional U.s. family structure is becoming less common.

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8.8.2: What Is Marriage? What Is a Family?

Learning Objectives

By the end of this section, you will be able to:

1. Describe society's current understanding of family
2. Recognize changes in marriage and family patterns
3. Differentiate between lines of decent and residence

(a)

(b)

Figure \PageIndex{1}: The modern concept of family is far more encompassing than in past decades. What do you think constitutes a family? (Photo (a) courtesy Gareth Williams/flickr; photo (b) courtesy Guillaume Paumier/ Wikimedia Commons)

Marriage and family are key structures in most societies. While the two institutions have historically been closely linked in U.S. culture, their connection is becoming more complex. The relationship between marriage and family is an interesting topic of study to sociologists.

What is marriage? Different people define it in different ways. Not even sociologists are able to agree on a single meaning. For our purposes, we'll define **marriage** as a legally recognized social contract between two people, traditionally based on a sexual relationship and implying a permanence of the union. In practicing cultural relativism, we should also consider variations, such as whether a legal union is required (think of "common law" marriage and its equivalents), or whether more than two people can be involved (consider polygamy). Other variations on the definition of marriage might include whether spouses are of opposite sexes or the same sex and how one of the traditional expectations of marriage (to produce children) is understood today.

Sociologists are interested in the relationship between the institution of marriage and the institution of family because, historically, marriages are what create a family, and families are the most basic social unit upon which society is built. Both marriage and family create status roles that are sanctioned by society.

So what is a family? A husband, a wife, and two children—maybe even a pet—has served as the model for the traditional U.S. family for most of the twentieth century. But what about families

that deviate from this model, such as a single-parent household or a homosexual couple without children? Should they be considered families as well?

The question of what constitutes a family is a prime area of debate in family sociology, as well as in politics and religion. Social conservatives tend to define the family in terms of structure with each family member filling a certain role (like father, mother, or child). Sociologists, on the other hand, tend to define family more in terms of the manner in which members relate to one another than on a strict configuration of status roles. Here, we'll define **family** as a socially recognized group (usually joined by blood, marriage, cohabitation, or adoption) that forms an emotional connection and serves as an economic unit of society. Sociologists identify different types of families based on how one enters into them. A **family of orientation** refers to the family into which a person is born. A **family of procreation** describes one that is formed through marriage. These distinctions have cultural significance related to issues of lineage.

Drawing on two sociological paradigms, the sociological understanding of what constitutes a family can be explained by symbolic interactionism as well as functionalism. These two theories indicate that families are groups in which participants view themselves as family members and act accordingly. In other words, families are groups in which people come together to form a strong primary group connection and maintain emotional ties to one another over a long period of time. Such families may include groups of close friends or teammates. In addition, the functionalist perspective views families as groups that perform vital roles for society—both internally (for the family itself) and externally (for society as a whole). Families provide for one another's physical, emotional, and social well-being. Parents care for and socialize children. Later in life, adult children often care for elderly parents. While interactionism helps us understand the subjective experience of belonging to a "family," functionalism illuminates the many purposes of families and their roles in the maintenance of a balanced society (Parsons and Bales 1956). We will go into more detail about how these theories apply to family in.

Challenges Families Face

People in the United States as a whole are somewhat divided when it comes to determining what does and what does not constitute a family. In a 2010 survey conducted by professors at the University of Indiana, nearly all participants (99.8 percent) agreed that a husband, wife, and children constitute a family. Ninety-two percent stated that a husband and a wife without children still constitute a family. The numbers drop for less traditional structures: unmarried couples with children (83 percent), unmarried couples without children (39.6 percent), gay male couples with children (64 percent), and gay male couples without children (33 percent) (Powell et al. 2010). This survey revealed that children tend to be the key indicator in establishing "family" status: the percentage of individuals who agreed that unmarried couples and gay couples constitute a family nearly doubled when children were added.

The study also revealed that 60 percent of U.S. respondents agreed that if you consider yourself a family, you are a family (a concept that reinforces an interactionist perspective) (Powell 2010). The government, however, is not so flexible in its definition of "family." The U.S. Census Bureau defines a family as "a group of two people or more (one of whom is the householder) related by birth, marriage, or adoption and residing together" (U.S. Census Bureau 2010). While

this structured definition can be used as a means to consistently track family-related patterns over several years, it excludes individuals such as cohabitating unmarried heterosexual and homosexual couples. Legality aside, sociologists would argue that the general concept of family is more diverse and less structured than in years past. Society has given more leeway to the design of a family making room for what works for its members (Jayson 2010).

Family is, indeed, a subjective concept, but it is a fairly objective fact that family (whatever one's concept of it may be) is very important to people in the United States. In a 2010 survey by Pew Research Center in Washington, DC, 76 percent of adults surveyed stated that family is "the most important" element of their life—just one percent said it was "not important" (Pew Research Center 2010). It is also very important to society. President Ronald Regan notably stated, "The family has always been the cornerstone of American society. Our families nurture, preserve, and pass on to each succeeding generation the values we share and cherish, values that are the foundation of our freedoms" (Lee 2009). While the design of the family may have changed in recent years, the fundamentals of emotional closeness and support are still present. Most responders to the Pew survey stated that their family today is at least as close (45 percent) or closer (40 percent) than the family with which they grew up (Pew Research Center 2010).

Alongside the debate surrounding what constitutes a family is the question of what people in the United States believe constitutes a marriage. Many religious and social conservatives believe that marriage can only exist between a man and a woman, citing religious scripture and the basics of human reproduction as support. Social liberals and progressives, on the other hand, believe that marriage can exist between two consenting adults—be they a man and a woman, or a woman and a woman—and that it would be discriminatory to deny such a couple the civil, social, and economic benefits of marriage.

Marriage Patterns

With single parenting and **cohabitation** (when a couple shares a residence but not a marriage) becoming more acceptable in recent years, people may be less motivated to get married. In a recent survey, 39 percent of respondents answered "yes" when asked whether marriage is becoming obsolete (Pew Research Center 2010). The institution of marriage is likely to continue, but some previous patterns of marriage will become outdated as new patterns emerge. In this context, cohabitation contributes to the phenomenon of people getting married for the first time at a later age than was typical in earlier generations (Glezer 1991). Furthermore, marriage will continue to be delayed as more people place education and career ahead of "settling down."

One Partner or Many?

People in the United States typically equate marriage with **monogamy**, when someone is married to only one person at a time. In many countries and cultures around the world, however, having one spouse is not the only form of marriage. In a majority of cultures (78 percent), **polygamy**, or being married to more than one person at a time, is accepted (Murdock 1967), with most polygamous societies existing in northern Africa and east Asia (Altman and Ginat 1996). Instances of polygamy are almost exclusively in the form of polygyny. **Polygyny** refers to a man being married to more than one woman at the same time. The reverse, when a woman is married

to more than one man at the same time, is called **polyandry**. It is far less common and only occurs in about 1 percent of the world's cultures (Altman and Ginat 1996). The reasons for the overwhelming prevalence of polygamous societies are varied but they often include issues of population growth, religious ideologies, and social status.

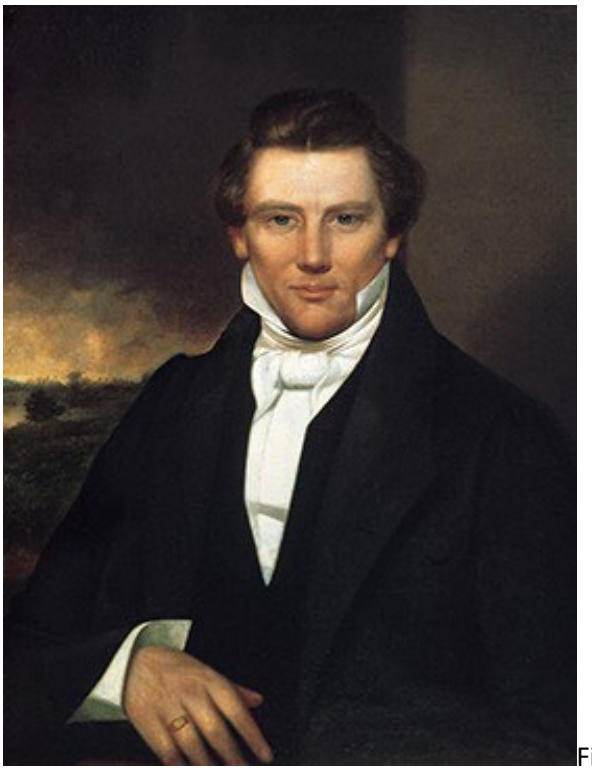
Figure \PageIndex{2}: Joseph Smith, Jr., the founder of Mormonism, is said to have practiced polygamy. (Photo courtesy of public domain/Wikimedia Commons)

While the majority of societies accept polygyny, the majority of people do not practice it. Often fewer than 10 percent (and no more than 25–35 percent) of men in polygamous cultures have more than one wife; these husbands are often older, wealthy, high-status men (Altman and Ginat 1996). The average plural marriage involves no more than three wives. Negev Bedouin men in Israel, for example, typically have two wives, although it is acceptable to have up to four (Griver 2008). As urbanization increases in these cultures, polygamy is likely to decrease as a result of greater access to mass media, technology, and education (Altman and Ginat 1996).

In the United States, polygamy is considered by most to be socially unacceptable and it is illegal. The act of entering into marriage while still married to another person is referred to as **bigamy** and is considered a felony in most states. Polygamy in the United States is often associated with those of the Mormon faith, although in 1890 the Mormon Church officially renounced polygamy. Fundamentalist Mormons, such as those in the Fundamentalist Church of Jesus Christ of Latter-Day Saints (FLDS), on the other hand, still hold tightly to the historic Mormon beliefs and practices and allow polygamy in their sect.

The prevalence of polygamy among Mormons is often overestimated due to sensational media stories such as the Yearning for Zion ranch raid in Texas in 2008 and popular television shows such as HBO's *Big Love* and TLC's *Sister Wives*. It is estimated that there are about 37,500 fundamentalist Mormons involved in polygamy in the United States, Canada, and Mexico, but that number has shown a steady decrease in the last 100 years (Useem 2007).

U.S. Muslims, however, are an emerging group with an estimated 20,000 practicing polygamy. Again, polygamy among U.S. Muslims is uncommon and occurs only in approximately 1 percent of the population (Useem 2007). For now polygamy among U.S. Muslims has gone fairly unnoticed by mainstream society, but like fundamentalist Mormons whose practices were off the public's radar for decades, they may someday find themselves at the center of social debate.

Residency and Lines of Descent

When considering one's lineage, most people in the United States look to both their father's and mother's sides. Both paternal and maternal ancestors are considered part of one's family. This pattern of tracing kinship is called **bilateral descent**. Note that **kinship**, or one's traceable ancestry, can be based on blood or marriage or adoption. Sixty percent of societies, mostly modernized nations, follow a bilateral descent pattern. **Unilateral descent** (the tracing of kinship through one parent only) is practiced in the other 40 percent of the world's societies, with high concentration in pastoral cultures (O'Neal 2006).

There are three types of unilateral descent: **patrilineal**, which follows the father's line only; **matrilineal**, which follows the mother's side only; and **ambilineal**, which follows either the father's only or the mother's side only, depending on the situation. In partrilineal societies, such as those in rural China and India, only males carry on the family surname. This gives males the prestige of permanent family membership while females are seen as only temporary members (Harrell 2001). U.S. society assumes some aspects of partrilineal decent. For instance, most children assume their father's last name even if the mother retains her birth name.

In matrilineal societies, inheritance and family ties are traced to women. Matrilineal descent is common in Native American societies, notably the Crow and Cherokee tribes. In these societies, children are seen as belonging to the women and, therefore, one's kinship is traced to one's mother, grandmother, great grandmother, and so on (Mails 1996). In ambilineal societies, which are most common in Southeast Asian countries, parents may choose to associate their children with the kinship of either the mother or the father. This choice maybe based on the desire to follow stronger or more prestigious kinship lines or on cultural customs such as men following their father's side and women following their mother's side (Lambert 2009).

Tracing one's line of descent to one parent rather than the other can be relevant to the issue of residence. In many cultures, newly married couples move in with, or near to, family members. In a **patrilocal residence** system it is customary for the wife to live with (or near) her husband's blood relatives (or family or orientation). Patrilocal systems can be traced back thousands of years. In a DNA analysis of 4,600-year-old bones found in Germany, scientists found indicators of patrilocal living arrangements (Haak et al 2008). Patrilocal residence is thought to be disadvantageous to women because it makes them outsiders in the home and community; it also

keeps them disconnected from their own blood relatives. In China, where patrilocal and patrilineal customs are common, the written symbols for maternal grandmother (*wáipá*) are separately translated to mean "outsider" and "women" (Cohen 2011).

Similarly, in **matrilocal residence** systems, where it is customary for the husband to live with his wife's blood relatives (or her family of orientation), the husband can feel disconnected and can be labeled as an outsider. The Minangkabau people, a matrilocal society that is indigenous to the highlands of West Sumatra in Indonesia, believe that home is the place of women and they give men little power in issues relating to the home or family (Joseph and Najmabadi 2003). Most societies that use patrilocal and patrilineal systems are patriarchal, but very few societies that use matrilocal and matrilineal systems are matriarchal, as family life is often considered an important part of the culture for women, regardless of their power relative to men.

Stages of Family Life

As we've established, the concept of family has changed greatly in recent decades. Historically, it was often thought that many families evolved through a series of predictable stages. Developmental or "stage" theories used to play a prominent role in family sociology (Strong and DeVault 1992). Today, however, these models have been criticized for their linear and conventional assumptions as well as for their failure to capture the diversity of family forms. While reviewing some of these once-popular theories, it is important to identify their strengths and weaknesses.

The set of predictable steps and patterns families experience over time is referred to as the **family life cycle**. One of the first designs of the family life cycle was developed by Paul Glick in 1955. In Glick's original design, he asserted that most people will grow up, establish families, rear and launch their children, experience an "empty nest" period, and come to the end of their lives. This cycle will then continue with each subsequent generation (Glick 1989). Glick's colleague, Evelyn Duvall, elaborated on the family life cycle by developing these classic stages of family (Strong and DeVault 1992):

Stage Theory		
Stage	Family Type	Children
1	Marriage Family	Childless
2	Procreation Family	Children ages 0 to 2.5
3	Preschooler Family	Children ages 2.5 to 6
4	School-age Family	Children ages 6–13
5	Teenage Family	Children ages 13–20

Stage Theory		
Stage	Family Type	Children
6	Launching Family	Children begin to leave home
7	Empty Nest Family	"Empty nest"; adult children have left home

This table shows one example of how a "stage" theory might categorize the phases a family goes through.

The family life cycle was used to explain the different processes that occur in families over time. Sociologists view each stage as having its own structure with different challenges, achievements, and accomplishments that transition the family from one stage to the next. For example, the problems and challenges that a family experiences in Stage 1 as a married couple with no children are likely much different than those experienced in Stage 5 as a married couple with teenagers. The success of a family can be measured by how well they adapt to these challenges and transition into each stage. While sociologists use the family life cycle to study the dynamics of family overtime, consumer and marketing researchers have used it to determine what goods and services families need as they progress through each stage (Murphy and Staples 1979).

As early "stage" theories have been criticized for generalizing family life and not accounting for differences in gender, ethnicity, culture, and lifestyle, less rigid models of the family life cycle have been developed. One example is the **family life course**, which recognizes the events that occur in the lives of families but views them as parting terms of a fluid course rather than in consecutive stages (Strong and DeVault 1992). This type of model accounts for changes in family development, such as the fact that in today's society, childbearing does not always occur with marriage. It also sheds light on other shifts in the way family life is practiced. Society's modern understanding of family rejects rigid "stage" theories and is more accepting of new, fluid models.

THE EVOLUTION OF TELEVISION FAMILIES

Whether you grew up watching the Cleavers, the Waltons, the Huxtables, or the Simpsons, most of the iconic families you saw in television sitcoms included a father, a mother, and children cavorting under the same roof while comedy ensued. The 1960s was the height of the suburban U.S. nuclear family on television with shows such as *The Donna Reed Show* and *Father Knows Best*. While some shows of this era portrayed single parents (*My Three Sons* and *Bonanza*, for instance), the single status almost always resulted from being widowed—not divorced or unwed.

Although family dynamics in real U.S. homes were changing, the expectations for families portrayed on television were not. The United States' first reality show, *An American Family* (which aired on PBS in 1973) chronicled Bill and Pat Loud and their children as a "typical" U.S. family. During the series, the oldest son, Lance, announced to the family that he was gay, and at the series' conclusion, Bill and Pat decided to divorce. Although the Loud's union was among the 30 percent of marriages that ended in divorce in 1973, the family was

featured on the cover of the March 12 issue of *Newsweek* with the title "The Broken Family" (Ruoff 2002).

Less traditional family structures in sitcoms gained popularity in the 1980s with shows such as *Diff'rent Strokes* (a widowed man with two adopted African American sons) and *One Day at a Time* (a divorced woman with two teenage daughters). Still, traditional families such as those in *Family Ties* and *The Cosby Show* dominated the ratings. The late 1980s and the 1990s saw the introduction of the dysfunctional family. Shows such as *Roseanne*, *Married with Children*, and *The Simpsons* portrayed traditional nuclear families, but in a much less flattering light than those from the 1960s did (Museum of Broadcast Communications 2011).

Over the past ten years, the nontraditional family has become somewhat of a tradition in television. While most situation comedies focus on single men and women without children, those that do portray families often stray from the classic structure: they include unmarried and divorced parents, adopted children, gay couples, and multigenerational households. Even those that do feature traditional family structures may show less-traditional characters in supporting roles, such as the brothers in the highly-rated shows *Everybody Loves Raymond* and *Two and Half Men*. Even wildly popular children's programs as Disney's *Hannah Montana* and *The Suite Life of Zack & Cody* feature single parents.

In 2009, ABC premiered an intensely nontraditional family with the broadcast of *Modern Family*. The show follows an extended family that includes a divorced and remarried father with one stepchild, and his biological adult children—one of who is in a traditional two-parent household, and the other who is a gay man in a committed relationship raising an adopted daughter. While this dynamic may be more complicated than the typical "modern" family, its elements may resonate with many of today's viewers. "The families on the shows aren't as idealistic, but they remain relatable," states television critic Maureen Ryan. "The most successful shows, comedies especially, have families that you can look at and see parts of your family in them" (Respers France 2010).

SUMMARY

Sociologists view marriage and families as societal institutions that help create the basic unit of social structure. Both marriage and a family may be defined differently—and practiced differently—in cultures across the world. Families and marriages, like other institutions, adapt to social change.

SHORT ANSWER

1. According to research, what are people's general thoughts on family in the United States? How do they view nontraditional family structures? How do you think these views might change in twenty years?
2. Explain the difference between bilateral and unilateral descent. Using your own association with kinship, explain which type of descent applies to you?

GLOSSARY

ambilineal

a type of unilateral descent that follows either the father's or the mother's side exclusively

bilateral descent

the tracing of kinship through both parents' ancestral lines

bigamy

the act of entering into marriage while still married to another person

cohabitation

the act of a couple sharing a residence while they are not married

family

socially recognized groups of individuals who may be joined by blood, marriage, or adoption and who form an emotional connection and an economic unit of society

family life course

a sociological model of family that sees the progression of events as fluid rather than as occurring in strict stages

family life cycle

a set of predictable steps and patterns families experience over time

family of orientation

the family into which one is born

family of procreation

a family that is formed through marriage

kinship

a person's traceable ancestry (by blood, marriage, and/or adoption)

marriage

a legally recognized contract between two or more people in a sexual relationship who have an expectation of permanence about their relationship

matrilineal descent

a type of unilateral descent that follows the mother's side only

matrilocal residence

a system in which it is customary for a husband to live with the his wife's family

monogamy

the act of being married to only one person at a time

patrilineal descent

a type of unilateral descent that follows the father's line only

patrilocal residence

a system in which it is customary for the a wife to live with (or near) the her husband's family

polyandry

a form of marriage in which one woman is married to more than one man at one time

polygamy

the state of being committed or married to more than one person at a time

polygyny

a form of marriage in which one man is married to more than one woman at one time

unilateral descent

the tracing of kinship through one parent only.

Further Research

For more information on family development and lines of descent, visit the New England Historical Genealogical Society's website, American Ancestors, and find out how genealogies have been established and recorded since 1845.

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8.8.3: Variations in Family Life

Learning Objectives

By the end of this section, you will be able to:

1. Recognize variations in family life
2. Understand the prevalence of single parents, cohabitation, same-sex couples, and unmarried individuals
3. Discuss the social impact of changing family structures

The combination of husband, wife, and children that 99.8 percent of people in the United States believe constitutes a family is not representative of 99.8 percent of U.S. families. According to 2010 census data, only 66 percent of children under seventeen years old live in a household with two married parents. This is a decrease from 77 percent in 1980 (U.S. Census 2011). This two-parent family structure is known as a **nuclear family**, referring to married parents and children as the nucleus, or core, of the group. Recent years have seen a rise in variations of the nuclear family with the parents not being married. Three percent of children live with two cohabiting parents (U.S. Census 2011).

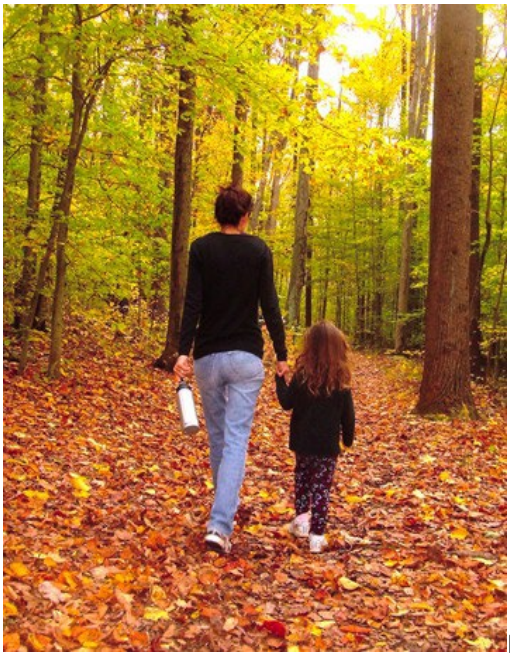

Figure 8.8.3.1: More than one-quarter of U.S. children live in single-parent households. (Photo courtesy of Ross Griff/flickr)

Single Parents

Single-parent households are on the rise. In 2010, 27 percent of children lived with a single parent only, up from 25 percent in 2008. Of that 27 percent, 23 percent live with their mother and three percent live with their father. Ten percent of children living with their single mother and 20 percent of children living with their single father also live with the cohabitating partner of their parent (for example, boyfriends or girlfriends).

Stepparents are an additional family element in two-parent homes. Among children living in two-parent households, 9 percent live with a biological or adoptive parent and a stepparent. The majority (70 percent) of those children live with their biological mother and a stepfather. Family structure has been shown to vary with the age of the child. Older children (fifteen to seventeen years old) are less likely to live with two parents than adolescent children (six to fourteen years old) or young children (zero to five years old). Older children who do live with two parents are also more likely to live with stepparents (U.S. Census 2011).

In some family structures a parent is not present at all. In 2010, three million children (4 percent of all children) lived with a guardian who was neither their biological nor adoptive parent. Of these children, 54 percent live with grandparents, 21 percent live with other relatives, and 24 percent live with non-relatives. This family structure is referred to as the **extended family**, and may include aunts, uncles, and cousins living in the same home. Foster parents account for about a quarter of non-relatives. The practice of grandparents acting as parents, whether alone or in combination with the child's parent, is becoming widespread among today's families (De Toledo and Brown 1995). Nine percent of all children live with a grandparent, and in nearly half of those cases, the grandparent maintains primary responsibility for the child (U.S. Census 2011). A grandparent functioning as the primary care provider often results from parental drug abuse, incarceration, or abandonment. Events like these can render the parent incapable of caring for his or her child.

Changes in the traditional family structure raise questions about how such societal shifts affect children. U.S. Census statistics have long shown that children living in homes with both parents grow up with more financial and educational advantages than children who are raised in single-parent homes (U.S. Census 1997). Parental marital status seems to be a significant indicator of advancement in a child's life. Children living with a divorced parent typically have more advantages than children living with a parent who never married; this is particularly true of children who live with divorced fathers. This correlates with the statistic that never-married parents are typically younger, have fewer years of schooling, and have lower incomes (U.S. Census 1997). Six in ten children living with only their mother live near or below the poverty level. Of those being raised by single mothers, 69 percent live in or near poverty compared to 45 percent for divorced mothers (U.S. Census 1997). Though other factors such as age and education play a role in these differences, it can be inferred that marriage between parents is generally beneficial for children.

Cohabitation

Living together before or in lieu of marriage is a growing option for many couples. Cohabitation, when a man and woman live together in a sexual relationship without being married, was practiced by an estimated 7.5 million people (11.5 percent of the population) in 2011, which shows an increase of 13 percent since 2009 (U.S. Census 2010). This surge in cohabitation is likely due to the decrease in social stigma pertaining to the practice. In a 2010 National Center for Health Statistics survey, only 38 percent of the 13,000-person sample thought that cohabitation negatively impacted society (Jayson 2010). Of those who cohabitate, the majority are non-Hispanic with no high school diploma or GED and grew up in a single-parent household (U.S. Census 2010).

Cohabitating couples may choose to live together in an effort to spend more time together or to save money on living costs. Many couples view cohabitation as a "trial run" for marriage. Today, approximately 28 percent of men and women cohabitated before their first marriage. By comparison, 18 percent of men and 23 percent of women married without ever cohabitating (U.S. Census Bureau 2010). The vast majority of cohabitating relationships eventually result in marriage; only 15 percent of men and women cohabitate only and do not marry. About one-half of cohabitators transition into marriage within three years (U.S. Census 2010).

While couples may use this time to "work out the kinks" of a relationship before they wed, the most recent research has found that cohabitation has little effect on the success of a marriage. In fact, those who do not cohabitate before marriage have slightly better rates of remaining married for more than ten years (Jayson 2010). Cohabitation may contribute to the increase in the number of men and women who delay marriage. The median age for marriage is the highest it has ever been since the U.S. Census kept records—age twenty-six for women and age twenty-eight for men (U.S. Census 2010).

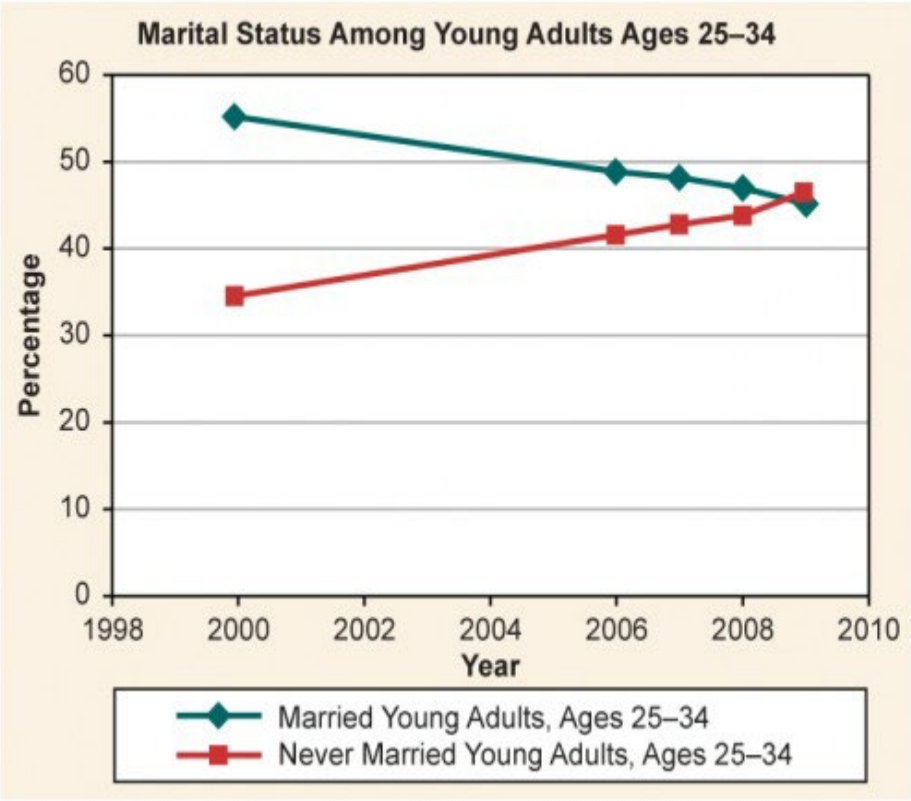

Figure 8.8.3.2: As shown by this graph of marital status percentages among young adults, more young people are choosing to delay or opt-out of marriage. (U.S. Census Bureau, 2000 Census and American Community Survey)

Same-Sex Couples

The number of same-sex couples has grown significantly in the past decade. The U.S. Census Bureau reported 594,000 same-sex couple households in the United States, a 50 percent increase from 2000. This increase is a result of more coupling, the growing social acceptance of

homosexuality, and a subsequent increase in willingness to report it. Nationally, same-sex couple households make up 1 percent of the population, ranging from as little as 0.29 percent in Wyoming to 4.01 percent in the District of Columbia (U.S. Census 2011). Legal recognition of same-sex couples as spouses is different in each state, as only six states and the District of Columbia have legalized same-sex marriage. The 2010 U.S. Census, however, allowed same-sex couples to report as spouses regardless of whether their state legally recognizes their relationship. Nationally, 25 percent of all same-sex households reported that they were spouses. In states where same-sex marriages are performed, nearly half (42.4 percent) of same-sex couple households were reported as spouses.

In terms of demographics, same-sex couples are not very different from opposite-sex couples. Same-sex couple households have an average age of 52 and an average household income of $91,558; opposite-sex couple households have an average age of 59 and an average household income of $95,075. Additionally, 31 percent of same-sex couples are raising children, not far from the 43 percent of opposite-sex couples (U.S. Census 2009). Of the children in same-sex couple households, 73 percent are biological children (of only one of the parents), 21 percent are adopted only, and 6 percent are a combination of biological and adopted (U.S. Census 2009).

While there is some concern from socially conservative groups regarding the well-being of children who grow up in same-sex households, research reports that same-sex parents are as effective as opposite-sex parents. In an analysis of 81 parenting studies, sociologists found no quantifiable data to support the notion that opposite-sex parenting is any better than same-sex parenting. Children of lesbian couples, however, were shown to have slightly lower rates of behavioral problems and higher rates of self-esteem (Biblarz and Stacey 2010).

Staying Single

Gay or straight, a new option for many people in the United States is simply to stay single. In 2010, there were 99.6 million unmarried individuals over age eighteen in the United States, accounting for 44 percent of the total adult population (U.S. Census 2011). In 2010, never-married individuals in the twenty-five to twenty-nine age bracket accounted for 62 percent of women and 48 percent of men, up from 11 percent and 19 percent, respectively, in 1970 (U.S. Census 2011). Single, or never-married, individuals are found in higher concentrations in large cities or metropolitan areas, with New York City being one of the highest.

Although both single men and single women report social pressure to get married, women are subject to greater scrutiny. Single women are often portrayed as unhappy “spinsters” or “old maids” who cannot find a man to marry them. Single men, on the other hand, are typically portrayed as lifetime bachelors who cannot settle down or simply “have not found the right girl.” Single women report feeling insecure and displaced in their families when their single status is disparaged (Roberts 2007). However, single women older than thirty-five years old report feeling secure and happy with their unmarried status, as many women in this category have found success in their education and careers. In general, women feel more independent and more prepared to live a large portion of their adult lives without a spouse or domestic partner than they did in the 1960s (Roberts 2007).

The decision to marry or not to marry can be based a variety of factors including religion and cultural expectations. Asian individuals are the most likely to marry while African Americans are the least likely to marry (Venugopal 2011). Additionally, individuals who place no value on religion are more likely to be unmarried than those who place a high value on religion. For black women, however, the importance of religion made no difference in marital status (Bakalar 2010). In general, being single is not a rejection of marriage; rather, it is a lifestyle that does not necessarily include marriage. By age forty, according to census figures, 20 percent of women and 14 of men will have never married (U.S. Census Bureau 2011).

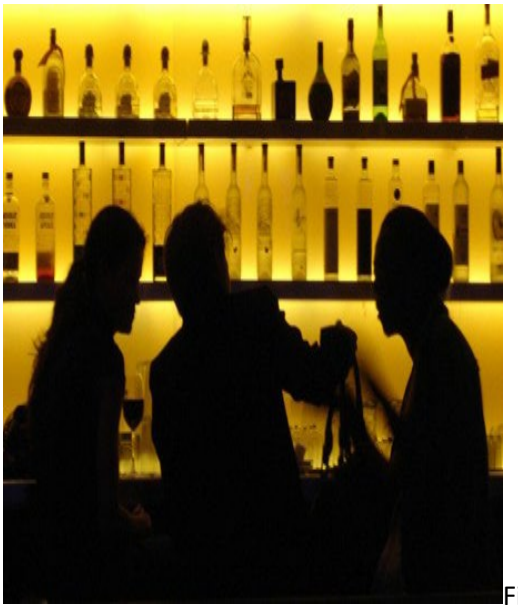
Figure 8.8.3.3: More and more people in the United States are choosing lifestyles that don't include marriage. (Photo courtesy of Glenn Harper/flickr)

DECEPTIVE DIVORCE RATES

It is often cited that half of all marriages end in divorce. This statistic has made many people cynical when it comes to marriage, but it is misleading. Let's take a closer look at the data.

Using National Center for Health Statistics data from 2003 that show a marriage rate of 7.5 (per 1000 people) and a divorce rate of 3.8, it would appear that exactly one-half of all marriages failed (Hurley 2005). This reasoning is deceptive, however, because instead of tracing actual marriages to see their longevity (or lack thereof), this compares what are unrelated statistics: that is, the number of marriages in a given year does not have a direct correlation to the divorces occurring that same year. Research published in the *New York Times* took a different approach—determining how many people had ever been married, and of those, how many later divorced. The result? According to this analysis, U.S. divorce rates have only gone as high as 41 percent (Hurley 2005). Another way to calculate divorce rates would be through a cohort study. For instance, we could determine the percentage of marriages that are intact after, say, five or seven years, compared to marriages that have ended in divorce after five or seven years. Sociological researchers must remain aware of research methods and how statistical results are applied. As illustrated, different methodologies and different interpretations can lead to contradictory, and even misleading, results.

Theoretical Perspectives on Marriage and Family

Sociologists study families on both the macro and micro level to determine how families function. Sociologists may use a variety of theoretical perspectives to explain events that occur within and outside of the family.

Functionalism

When considering the role of family in society, functionalists uphold the notion that families are an important social institution and that they play a key role in stabilizing society. They also note that family members take on status roles in a marriage or family. The family—and its members—perform certain functions that facilitate the prosperity and development of society.

Sociologist George Murdock conducted a survey of 250 societies and determined that there are four universal residual functions of the family: sexual, reproductive, educational, and economic (Lee 1985). According to Murdock, the family (which for him includes the state of marriage) regulates sexual relations between individuals. He does not deny the existence or impact of premarital or extramarital sex, but states that the family offers a socially legitimate sexual outlet for adults (Lee 1985). This outlet gives way to reproduction, which is a necessary part of ensuring the survival of society.

Once children are produced, the family plays a vital role in training them for adult life. As the primary agent of socialization and enculturation, the family teaches young children the ways of thinking and behaving that follow social and cultural norms, values, beliefs, and attitudes. Parents teach their children manners and civility. A well-mannered child reflects a well-mannered parent.

Parents also teach children gender roles. Gender roles are an important part of the economic function of a family. In each family, there is a division of labor that consists of instrumental and expressive roles. Men tend to assume the instrumental roles in the family, which typically involve work outside of the family that provides financial support and establishes family status. Women tend to assume the expressive roles, which typically involve work inside of the family which provides emotional support and physical care for children (Crano and Aronoff 1978). According to functionalists, the differentiation of the roles on the basis of sex ensures that families are well balanced and coordinated. When family members move outside of these roles, the family is thrown out of balance and must recalibrate in order to function properly. For example, if the father assumes an expressive role such as providing daytime care for the children, the mother must take on an instrumental role such as gaining paid employment outside of the home in order for the family to maintain balance and function.

Conflict Theory

Conflict theorists are quick to point out that U.S. families have been defined as private entities, the consequence of which has been to leave family matters to only those within the family. Many people in the United States are resistant to government intervention in the family: parents do not want the government to tell them how to raise their children or to become involved in domestic

issues. Conflict theory highlights the role of power in family life and contends that the family is often not a haven but rather an arena where power struggles can occur. This exercise of power often entails the performance of family status roles. Conflict theorists may study conflicts as simple as the enforcement of rules from parent to child, or they may examine more serious issues such as domestic violence (spousal and child), sexual assault, marital rape, and incest.

The first study of marital power was performed in 1960. Researchers found that the person with the most access to value resources held the most power. As money is one of the most valuable resources, men who worked in paid labor outside of the home held more power than women who worked inside the home (Blood and Wolfe 1960). Conflict theorists find disputes over the division of household labor to be a common source of marital discord. Household labor offers no wages and, therefore, no power. Studies indicate that when men do more housework, women experience more satisfaction in their marriages, reducing the incidence of conflict (Coltrane 2000). In general, conflict theorists tend to study areas of marriage and life that involve inequalities or discrepancies in power and authority, as they are reflective of the larger social structure.

Symbolic Interactionism

Interactionists view the world in terms of symbols and the meanings assigned to them (LaRossa and Reitzes 1993). The family itself is a symbol. To some, it is a father, mother, and children; to others, it is any union that involves respect and compassion. Interactionists stress that family is not an objective, concrete reality. Like other social phenomena, it is a social construct that is subject to the ebb and flow of social norms and ever-changing meanings.

Consider the meaning of other elements of family: “parent” was a symbol of a biological and emotional connection to a child; with more parent-child relationships developing through adoption, remarriage, or change in guardianship, the word “parent” today is less likely to be associated with a biological connection than with whoever is socially recognized as having the responsibility for a child’s upbringing. Similarly, the terms “mother” and “father” are no longer rigidly associated with the meanings of caregiver and breadwinner. These meanings are more free-flowing through changing family roles.

Interactionists also recognize how the family status roles of each member are socially constructed, playing an important part in how people perceive and interpret social behavior. Interactionists view the family as a group of role players or “actors” that come together to act out their parts in an effort to construct a family. These roles are up for interpretation. In the late nineteenth and early twentieth century, a “good father,” for example, was one who worked hard to provided financial security for his children. Today, a “good father” is one who takes the time outside of work to promote his children’s emotional well-being, social skills, and intellectual growth—in some ways, a much more daunting task.

SUMMARY

People’s concepts of marriage and family in the United States are changing. Increases in cohabitation, same-sex partners, and singlehood are altering our ideas of marriage. Similarly,

single parents, same-sex parents, cohabitating parents, and unwed parents are changing our notion of what it means to be a family. While most children still live in opposite-sex, two-parent, married households, that is no longer viewed as the only type of nuclear family.

SHORT ANSWER

1. Explain the different variations of the nuclear family and the trends that occur in each.
2. Why are some couples choosing to cohabitate before marriage? What effect does cohabitation have on marriage?

GLOSSARY

extended family

a household that includes at least one parent and child as well as other relatives like grandparents, aunts, uncles, and cousins

nuclear family

two parents (traditionally a married husband and wife) and children living in the same household

Further Research

For more statistics on marriage and family, see the Forum on Child and Family Statistics at http://openstaxcollege.org/l/child_family_statistics, as well as the American Community Survey, the Current Population Survey, and the U.S. Census decennial survey at http://openstaxcollege.org/l/US_Census.

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8.8.4: Challenges Families Face

Learning Objectives

By the end of this section, you will be able to:

1. Understand the social and interpersonal impact of divorce
2. Describe the social and interpersonal impact of family abuse

As the structure of family changes over time, so do the challenges families face. Events like divorce and remarriage present new difficulties for families and individuals. Other long-standing domestic issues such as abuse continue to strain the health and stability of today's families.

Divorce and Remarriage

Divorce, while fairly common and accepted in modern U.S. society, was once a word that would only be whispered and was accompanied by gestures of disapproval. In 1960, divorce was generally uncommon, affecting only 9.1 out of every 1,000 married persons. That number more than doubled (to 20.3) by 1975 and peaked in 1980 at 22.6 (Popenoe 2007). Over the last quarter-century, divorce rates have dropped steadily and are now similar to those in 1970. The dramatic increase in divorce rates after the 1960s has been associated with the liberalization of divorce laws and the shift in societal make up due to women increasingly entering the workforce (Michael 1978). The decrease in divorce rates can be attributed to two probable factors: an increase in the age at which people get married, and an increased level of education among those who marry—both of which have been found to promote greater marital stability.

Divorce does not occur equally among all people in the United States; some segments of the U.S. population are more likely to divorce than others. According the American Community Survey (ACS), men and women in the Northeast have the lowest rates of divorce at 7.2 and 7.5 per 1,000 people. The South has the highest rate of divorce at 10.2 for men and 11.1 for women. Divorce rates are likely higher in the South because marriage rates are higher and marriage occurs at younger-than-average ages in this region. In the Northeast, the marriage rate is lower and first marriages tend to be delayed; therefore, the divorce rate is lower (U.S. Census Bureau 2011).

The rate of divorce also varies by race. In a 2009 ACS study, American Indian and Alaskan Natives reported the highest percentages of currently divorced individuals (12.6 percent) followed by blacks (11.5 percent), whites (10.8 percent), Pacific Islanders (8 percent), Latinos (7.8 percent) and Asians (4.9 percent) (ACS 2011). In general those who marry at a later age, have a college education have lower rates of divorce.

There has been a steady decrease in divorce over the past decade.

Provisional number of divorces and annulments and rate: United States, 2000–2011 (National Center for Health Statistics, CDC)			
Year	Divorces and annulments	Population	Rate per 1,000 total population
2011[1]	877,000	246,273,366	3.6
2010[1]	872,000	244,122,529	3.6
2009[1]	840,000	242,610,561	3.5
2008[1]	844,000	240,545,163	3.5
2007[1]	856,000	238,352,850	3.6
2006[1]	872,000	236,094,277	3.7
2005[1]	847,000	233,495,163	3.6
2004[2]	879,000	236,402,656	3.7
2003[3]	927,000	243,902,090	3.8
2002[4]	955,000	243,108,303	3.9
2001[5]	940,000	236,416,762	4.0
2000[5]	944,000	233,550,143	4.0

Note: Rates for 2001-2009 have been revised and are based on intercensal population estimates from the 2000 and 2010 censuses. Populations for 2010 rates are based on the 2010 census.

[1]Excludes data for California, Georgia, Hawaii, Indiana, Louisiana, and Minnesota.

[2]Excludes data for California, Georgia, Hawaii, Indiana, and Louisiana.

[3]Excludes data for California, Hawaii, Indiana, and Oklahoma.

[4]Excludes data for California, Indiana, and Oklahoma.

[5]Excludes data for California, Indiana, Louisiana, and Oklahoma.

So what causes divorce? While more young people are choosing to postpone or opt out of marriage, those who enter into the union do so with the expectation that it will last. A great deal of marital problems can be related to stress, especially financial stress. According to researchers participating in the University of Virginia's National Marriage Project, couples who enter marriage without a strong asset base (like a home, savings, and a retirement plan) are 70 percent more likely to be divorced after three years than are couples with at least $10,000 in assets. This is connected to factors such as age and education level that correlate with low incomes.

The addition of children to a marriage creates added financial and emotional stress. Research has established that marriages enter their most stressful phase upon the birth of the first child (Popenoe and Whitehead 2007). This is particularly true for couples who have multiples (twins, triplets, and so on). Married couples with twins or triplets are 17 percent more likely to divorce than those with children from single births (McKay 2010). Another contributor to the likelihood of divorce is a general decline in marital satisfaction over time. As people get older, they may find that their values and life goals no longer match up with those of their spouse (Popenoe and Whitehead 2004).

Divorce is thought to have a cyclical pattern. Children of divorced parents are 40 percent more likely to divorce than children of married parents. And when we consider children whose parents divorced and then remarried, the likelihood of their own divorce rises to 91 percent (Wolfinger 2005). This might result from being socialized to a mindset that a broken marriage can be replaced rather than repaired (Wolfinger 2005). That sentiment is also reflected in the finding that when both partners of a married couple have been previously divorced, their marriage is 90 percent more likely to end in divorce (Wolfinger 2005).

Figure 8.8.4.1: A study from Radford University indicated that bartenders are among the professions with the highest divorce rates (38.4 percent). Other traditionally low-wage industries (like restaurant service, custodial employment, and factory work) are also associated with higher divorce rates. (Aamodt and McCoy 2010). (Photo courtesy of Daniel Lobo/flickr)

People in a second marriage account for approximately 19.3 percent of all married persons, and those who have been married three or more times account for 5.2 percent (U.S. Census Bureau 2011). The vast majority (91 percent) of remarriages occur after divorce; only 9 percent occur after death of a spouse (Kreider 2006). Most men and women remarry within five years of a divorce, with the median length for men (three years) being lower than for women (4.4 years). This length of time has been fairly consistent since the 1950s. The majority of those who remarry are between the ages of twenty-five and forty-four (Kreider 2006). The general pattern of remarriage also shows that whites are more likely to remarry than black Americans.

Marriage the second time around (or third or fourth) can be a very different process than the first. Remarriage lacks many of the classic courtship rituals of a first marriage. In a second marriage, individuals are less likely to deal with issues like parental approval, premarital sex, or desired family size (Elliot 2010). In a survey of households formed by remarriage, a mere 8 percent included only biological children of the remarried couple. Of the 49 percent of homes that include children, 24 percent included only the woman's biological children, 3 percent included only the man's biological children, and 9 percent included a combination of both spouse's children (U.S. Census Bureau 2006).

Children of Divorce and Remarriage

Divorce and remarriage can been stressful on partners and children alike. Divorce is often justified by the notion that children are better off in a divorced family than in a family with parents who do not get along. However, long-term studies determine that to be generally untrue. Research suggests that while marital conflict does not provide an ideal childrearing environment, going through a divorce can be damaging. Children are often confused and frightened by the threat to their family security. They may feel responsible for the divorce and attempt to bring their parents back together, often by sacrificing their own well-being (Amato 2000). Only in high-conflict homes do children benefit from divorce and the subsequent decrease in conflict. The majority of divorces come out of lower-conflict homes, and children from those homes are more negatively impacted by the stress of the divorce than the stress of unhappiness in the marriage (Amato 2000). Studies also suggest that stress levels for children are not improved when a child acquires a stepfamily through marriage. Although there may be increased economic stability, stepfamilies typically have a high level of interpersonal conflict (McLanahan and Sandefur 1994).

Children's ability to deal with a divorce may depend on their age. Research has found that divorce may be most difficult for school-aged children, as they are old enough to understand the separation but not old enough to understand the reasoning behind it. Older teenagers are more likely to recognize the conflict that led to the divorce but may still feel fear, loneliness, guilt, and pressure to choose sides. Infants and preschool-age children may suffer the heaviest impact from the loss of routine that the marriage offered (Temke 2006).

Proximity to parents also makes a difference in a child's well-being after divorce. Boys who live or have joint arrangements with their fathers show less aggression than those who are raised by their mothers only. Similarly, girls who live or have joint arrangements with their mothers tend to be more responsible and mature than those who are raised by their fathers only. Nearly three-

fourths of the children of parents who are divorced live in a household headed by their mother, leaving many boys without a father figure residing in the home (U.S. Census Bureau 2011b). Still, researchers suggest that a strong parent-child relationship can greatly improve a child's adjustment to divorce (Temke 2006).

There is empirical evidence that divorce has not discouraged children in terms of how they view marriage and family. A blended family has additional stress resulting from yours/mine/ours children. The blended family also has a ex-parent that has different discipline techniques. In a survey conducted by researchers from the University of Michigan, about three-quarters of high school seniors said it was "extremely important" to have a strong marriage and family life. And over half believed it was "very likely" that they would be in a lifelong marriage (Popenoe and Whitehead 2007). These numbers have continued to climb over the last twenty-five years.

Violence and Abuse

Violence and abuse are among the most disconcerting of the challenges that today's families face. Abuse can occur between spouses, between parent and child, as well as between other family members. The frequency of violence among families is a difficult to determine because many cases of spousal abuse and child abuse go unreported. In any case, studies have shown that abuse (reported or not) has a major impact on families and society as a whole.

Domestic Violence

Domestic violence is a significant social problem in the United States. It is often characterized as violence between household or family members, specifically spouses. To include unmarried, cohabitating, and same-sex couples, family sociologists have created the term **intimate partner violence (IPV)**. Women are the primary victims of intimate partner violence. It is estimated that one in four women has experienced some form of IPV in her lifetime (compared to one in seven men) (Catalano 2007). IPV may include physical violence, such as punching, kicking, or other methods of inflicting physical pain; sexual violence, such as rape or other forced sexual acts; threats and intimidation that imply either physical or sexual abuse; and emotional abuse, such as harming another's sense of self-worth through words or controlling another's behavior. IPV often starts as emotional abuse and then escalates to other forms or combinations of abuse (Centers for Disease Control 2012).

Figure 8.8.4.2: Thirty percent of women who are murdered are killed by their intimate partner. What does this statistic reveal about societal patterns and norms concerning intimate relationships and gender roles? (Photo courtesy of Kathy Kimpel/flickr)

In 2010, of IPV acts that involved physical actions against women, 57 percent involved physical violence only; 9 percent involved rape and physical violence; 14 percent involved physical violence and stalking; 12 percent involved rape, physical violence, and stalking; and 4 percent involved rape only (CDC 2011). This is vastly different than IPV abuse patterns for men, which show that nearly all (92 percent) physical acts of IVP take the form of physical violence and fewer than 1 percent involve rape alone or in combination (Catalano 2007). IPV affects women at greater rates than men because women often take the passive role in relationships and may become emotionally dependent on their partners. Perpetrators of IPV work to establish and maintain such dependence in order to hold power and control over their victims, making them feel stupid, crazy, or ugly—in some way worthless.

IPV affects different segments of the population at different rates. The rate of IPV for black women (4.6 per 1,000 persons over the age of twelve) is higher than that for white women (3.1). These numbers have been fairly stable for both racial groups over the last ten years. However, the numbers have steadily increased for Native Americans and Alaskan Natives (up to 11.1 for females) (Catalano 2007).

Those who are separated report higher rates of abuse than those with other marital statuses, as conflict is typically higher in those relationships. Similarly, those who are cohabitating are more likely than those who are married to experience IPV (Stets and Straus 1990). Other researchers have found that the rate of IPV doubles for women in low-income disadvantaged areas when compared to IPV experienced by women who reside in more affluent areas (Benson and Fox 2004). Overall, women ages twenty to twenty-four are at the greatest risk of nonfatal abuse (Catalano 2007).

Accurate statistics on IPV are difficult to determine, as it is estimated that more than half of nonfatal IPV goes unreported. It is not until victims choose to report crimes that patterns of abuse are exposed. Most victims studied stated that abuse had occurred for at least two years prior to their first report (Carlson, Harris, and Holden 1999).

Sometimes abuse is reported to police by a third party, but it still may not be confirmed by victims. A study of domestic violence incident reports found that even when confronted by police about abuse, 29 percent of victims denied that abuse occurred. Surprisingly, 19 percent of their assailants were likely to admit to abuse (Felson, Ackerman, and Gallagher 2005). According to the National Criminal Victims Survey, victims cite varied reason why they are reluctant to report abuse, as shown in the table below.

Reason Abuse Is Unreported	% Females	% Males
Considered a Private Matter	22	39
Fear of Retaliation	12	5
To Protect the Abuser	14	16
Belief That Police Won't Do Anything	8	8

This chart shows reasons that victims give for why they fail to report abuse to police authorities (Catalano 2007).

Two-thirds of nonfatal IPV occurs inside of the home and approximately 10 percent occurs at the home of the victim's friend or neighbor. The majority of abuse takes place between the hours of 6 p.m. and 6 a.m., and nearly half (42 percent) involves alcohol or drug use (Catalano 2007). Many perpetrators of IVP blame alcohol or drugs for their abuse, though studies have shown that alcohol and drugs do not cause IPV, they may only lower inhibitions (Hanson 2011). IPV has significant long-term effects on individual victims and on society. Studies have shown that IPV damage extends beyond the direct physical or emotional wounds. Extended IPV has been linked to unemployment among victims, as many have difficulty finding or holding employment. Additionally, nearly all women who report serious domestic problems exhibit symptoms of major depression (Goodwin, Chandler, and Meisel 2003).

Female victims of IPV are also more likely to abuse alcohol or drugs, suffer from eating disorders, and attempt suicide (Silverman et al. 2001). IPV is indeed something that impacts more than just intimate partners. In a survey, 34 percent of respondents said they have witnessed IPV, and 59 percent said that they know a victim personally (Roper Starch Worldwide 1995). Many people want to help IPV victims but are hesitant to intervene because they feel that it is a personal matter or they fear retaliation from the abuser—reasons similar to those of victims who do not report IPV.

Child Abuse

Children are among the most helpless victims of abuse. In 2010, there were more than 3.3 million reports of child abuse involving an estimated 5.9 million children (Child Help 2011). Three-fifths of child abuse reports are made by professionals, including teachers, law

enforcement personal, and social services staff. The rest are made by anonymous sources, other relatives, parents, friends, and neighbors.

Child abuse may come in several forms, the most common being neglect (78.3 percent), followed by physical abuse (10.8 percent), sexual abuse (7.6 percent), psychological maltreatment (7.6 percent), and medical neglect (2.4 percent) (Child Help 2011). Some children suffer from a combination of these forms of abuse. The majority (81.2 percent) of perpetrators are parents; 6.2 percent are other relatives.

Infants (children less than one year old) were the most victimized population with an incident rate of 20.6 per 1,000 infants. This age group is particularly vulnerable to neglect because they are entirely dependent on parents for care. Some parents do not purposely neglect their children; factors such as cultural values, standard of care in a community, and poverty can lead to hazardous level of neglect. If information or assistance from public or private services are available and a parent fails to use those services, child welfare services may intervene (U.S. Department of Health and Human Services).

Figure 8.8.4.3: The Casey Anthony trial, in which Casey was ultimately acquitted of murder charges against her daughter, Caylee, created public outrage and brought to light issues of child abuse and neglect across the United States. (Photo courtesy of Bruce Tuten/flickr)

Infants are also often victims of physical abuse, particularly in the form of violent shaking. This type of physical abuse is referred to as **shaken-baby syndrome**, which describes a group of medical symptoms such as brain swelling and retinal hemorrhage resulting from forcefully shaking or causing impact to an infant's head. A baby's cry is the number one trigger for shaking. Parents may find themselves unable to soothe a baby's concerns and may take their

frustration out on the child by shaking him or her violently. Other stress factors such as a poor economy, unemployment, and general dissatisfaction with parental life may contribute this type of abuse. While there is no official central registry of shaken-baby syndrome statistics, it is estimated that each year 1,400 babies die or suffer serious injury from being shaken (Barr 2007).

CORPORAL PUNISHMENT

Physical abuse in children may come in the form of beating, kicking, throwing, choking, hitting with objects, burning, or other methods. Injury inflicted by such behavior is considered abuse even if the parent or caregiver did not intend to harm the child. Other types of physical contact that are characterized as discipline (spanking, for example) are not considered abuse as long as no injury results (Child Welfare Information Gateway 2008).

This issue is rather controversial among modern-day people in the United States. While some parents feel that physical discipline, or corporal punishment, is an effective way to respond to bad behavior, others feel that it is a form of abuse. According to a poll conducted by ABC News, 65 percent of respondents approve of spanking and 50 percent said that they sometimes spank their child.

Tendency toward physical punishment may be affected by culture and education. Those who live in the South are more likely than those who live in other regions to spank their child. Those who do not have a college education are also more likely to spank their child (Crandall 2011). Currently, 23 states officially allow spanking in the school system; however, many parents may object and school officials must follow a set of clear guidelines when administering this type of punishment (Crandall 2011). Studies have shown that spanking is not an effective form of punishment and may lead to aggression by the victim, particularly in those who are spanked at a young age (Berlin 2009).

Child abuse occurs at all socioeconomic and education levels and crosses ethnic and cultural lines. Just as child abuse is often associated with stresses felt by parents, including financial stress, parents who demonstrate resilience to these stresses are less likely to abuse (Samuels 2011). Young parents are typically less capable of coping with stresses, particularly the stress of becoming a new parent. Teenage mothers are more likely to abuse their children than their older counterparts. As a parent's age increases, the risk of abuse decreases. Children born to mothers who are fifteen years old or younger are twice as likely to be abused or neglected by age five than are children born to mothers ages twenty to twenty-one (George and Lee 1997).

Drug and alcohol use is also a known contributor to child abuse. Children raised by substance abusers have a risk of physical abuse three times greater than other kids, and neglect is four times as prevalent in these families (Child Welfare Information Gateway 2011). Other risk factors include social isolation, depression, low parental education, and a history of being mistreated as a child. Approximately 30 percent of abused children will later abuse their own children (Child Welfare Information Gateway 2006).

The long-term effects of child abuse impact the physical, mental, and emotional wellbeing of a child. Injury, poor health, and mental instability occur at a high rate in this group, with 80

percent meeting the criteria of one or more psychiatric disorders, such as depression, anxiety, or suicidal behavior, by age twenty-one. Abused children may also suffer from cognitive and social difficulties. Behavioral consequences will affect most, but not all, of child abuse victims. Children of abuse are 25 percent more likely, as adolescents, to suffer from difficulties like poor academic performance and teen pregnancy, or to engage in behaviors like drug abuse and general delinquency. They are also more likely to participate in risky sexual acts that increase their chances of contracting a sexually transmitted disease (Child Welfare Information Gateway 2006). Other risky behaviors include drug and alcohol abuse. As these consequences can affect the health care, education, and criminal systems, the problems resulting from child abuse do not just belong to the child and family, but to society as a whole.

SUMMARY

Today's families face a variety of challenges, specifically to marital stability. While divorce rates have decreased in the last twenty-five years, many family members, especially children, still experience the negative effects of divorce. Children are also negatively impacted by violence and abuse within the home, with nearly 6 million children abused each year.

SHORT ANSWER

1. Explain how financial status impacts marital stability. What other factors are associated with a couple's financial status?
2. Explain why more than half of IPV goes unreported? Why are those who are abused unlikely to report the abuse?

GLOSSARY

intimate partner violence (IPV)

violence that occurs between individuals who maintain a romantic or sexual relationship

shaken-baby syndrome

a group of medical symptoms such as brain swelling and retinal hemorrhage resulting from forcefully shaking or impacting an infant's head

Further Research

To find more information on child abuse, visit the U.S. Department of Health and Human Services website to review documents provided by the Child Welfare Information Gateway.

8.8.4: Challenges Families Face is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

8.9: Video: The Way We Work - Three Rules For Better Work-life Balance

Have you answered a work email during an important family event? Or taken a call from your boss while on vacation? According to behavioral scientist and Harvard Business School professor Ashley Whillans, "always-on" work culture is not only ruining our personal well-being—but our work, as well. She shares which bad habits are stopping us from getting what we need out of our free time and three practical steps for setting boundaries that stick.

https://www.youtube.com/watch?v=4c_xYLwOx-g

8.9: Video: The Way We Work - Three Rules For Better Work-life Balance is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

8.10: Case Study: DLS Engineering Associates Sued by EEOC for Pregnancy Discrimination

Federal Contractor Failed to Hire Pregnant Woman, Federal Agency Charges

JACKSONVILLE – DLS Engineering Associates, LLC, a federal contractor based in Virginia Beach, Virginia, violated federal law by rescinding a woman's job offer upon learning she was pregnant, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit filed today.

According to the EEOC's suit, DLS offered a woman a position as an engineering logistics analyst in Jacksonville, Florida. After she told the company's vice president that she was five months pregnant, he rescinded her offer, explaining the company could not hire someone who was pregnant.
Pregnancy discrimination violates Title VII of the Civil Rights Act of 1964, as amended by the Pregnancy Discrimination Act. EEOC filed suit in U.S. District Court for the Middle District of Florida, Jacksonville Division (EEOC v. DLS Engineering Associates, LLC, Case No. 3:21-cv-1214) after first attempting to reach a pre-litigation settlement through its conciliation process. The agency seeks back pay and compensatory and punitive damages for the applicant. The suit also seeks injunctive relief to prevent and correct pregnancy discrimination and training of DLS's managers and supervisors about federal equal employment opportunity laws.
"This case underscores the need for EEOC to continue its vigorous enforcement of the laws that protect all women from harmful discrimination," said Kristen Foslid, acting regional attorney for the EEOC's Miami District.

The EEOC's Miami District Office director, Paul Valenti, added, "A woman's decision to work while she is pregnant rests solely with her. The EEOC remains steadfast in its commitment to take legal action against those who engage in pregnancy discrimination by forcing that decision."

The Miami District Office's jurisdiction includes Florida, Puerto Rico, and U.S. Virgin Islands. For more information about pregnancy discrimination, visit https://www.eeoc.gov/pregnancy-discrimination.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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9.1: Sex, Gender Identity and Expression

Learning Objectives

By the end of this section, you should be able to:

1. Define and differentiate between sex and gender
2. Define and discuss what is meant by gender identity
3. Distinguish the meanings of different sexual orientations, gender identities, and gender expressions

Figure 9.1.1: While the biological differences between males and females are fairly straightforward, the social and cultural aspects of being a man or woman can be complicated. (Credit: Mapbox Uncharted ERG /flickr)

When filling out a document such as a job application or school registration form, you are often asked to provide your name, address, phone number, birth date, and sex or gender. But have you ever been asked to provide your sex *and* your gender? Like most people, you may not have realized that sex and gender are not the same. However, sociologists and most other social scientists view them as conceptually distinct. **Sex** refers to physical or physiological differences between males and females, including both primary sex characteristics (the reproductive system) and secondary characteristics such as height and muscularity. **Gender** refers to behaviors, personal traits, and social positions that society attributes to being female or male.

A person's sex, as determined by their biology, does not always correspond with their gender. Therefore, the terms *sex* and *gender* are not interchangeable. A baby who is born with male genitalia will most likely be identified as male. As a child or adult, however, they may identify with the feminine aspects of culture. Since the term *sex* refers to biological or physical distinctions, characteristics of sex will not vary significantly between different human societies. Generally, persons of the female sex, regardless of culture, will eventually menstruate and develop breasts that can lactate. Characteristics of gender, on the other hand, may vary greatly between different societies. For example, in U.S. culture, it is considered feminine (or a trait of the female gender) to wear a dress or skirt. However, in many Middle Eastern, Asian, and African cultures, sarongs, robes, or gowns are considered masculine. The kilt worn by a Scottish man does not make him appear feminine in that culture.

The dichotomous or binary view of gender (the notion that someone is either male or female) is specific to certain cultures and is not universal. In some cultures, gender is viewed as fluid. In the past, some anthropologists used the term *berdache* to refer to individuals who occasionally or permanently dressed and lived as a different gender. The practice has been noted among certain Native American tribes (Jacobs, Thomas, and Lang 1997). Samoan culture accepts what Samoans refer to as a "third gender." *Fa'afafine*, which translates as "the way of the woman," is a term used to describe individuals who are born biologically male but embody both masculine and feminine traits. Fa'afafines are considered an important part of Samoan culture. Individuals from other cultures may mislabel their sexuality because fa'afafines have a varied sexual life that may include men and women (Poasa 1992).

SOCIAL POLICY AND DEBATE

The Legalese of Sex and Gender

The terms *sex* and *gender* have not always been differentiated in the English language. It was not until the 1950s that U.S. and British psychologists and other professionals formally began distinguishing between sex and gender. Since then, professionals have increasingly used the term gender (Moi 2005). By the end of the twenty-first century, expanding the proper usage of the term *gender* to everyday language became more challenging—particularly where legal language is concerned. In an effort to clarify usage of the terms *sex* and *gender*, U.S. Supreme Court Justice Antonin Scalia wrote in a 1994 briefing, "The word gender has acquired the new and useful connotation of cultural or attitudinal characteristics (as opposed to physical characteristics) distinctive to the sexes. That is to say, gender is to sex as feminine is to female and masculine is to male" (*J.E.B. v. Alabama*, 144 S. Ct. 1436 [1994]). Supreme Court Justice Ruth Bader Ginsburg had a different take, however. She freely swapped them in her briefings so as to avoid having the word "sex" pop up too often. Ginsburg decided on this approach earlier in her career while she was arguing before the Supreme court; her Columbia Law School secretary suggested it to Ginsburg, saying that when "those nine men" (the Supreme Court justices), "hear that word and their first association is not the way you want them to be thinking" (Block 2020).

More recently, the word "sex" was a key element of the landmark Supreme Court case affirming that the Civil Rights Act's workplace protections applied to LGBTQ people. Throughout the case documents and discussions, the term and its meanings are discussed extensively. In his decision

statement, Justice Neil Gorsuch wrote, “It is impossible to discriminate against a person for being homosexual or transgender without discriminating ... based on sex” (Supreme Court 2020). Dissenting justices and commentators felt that Gorsuch and the other justices in the majority were recalibrating the original usage of the term. The arguments about the language itself, which occupy much of the Court's writings on the matter, are further evidence of the evolving nature of the words, as well as their significance.

Sexuality and Sexual Orientation

A person's **sexuality** is their capacity to experience sexual feelings and attraction. Studying sexual attitudes and practices is a particularly interesting field of sociology because sexual behavior and attitudes about sexual behavior have cultural and societal influences and impacts. As you will see in the Relationships, Marriage, and Family chapter, each society interprets sexuality and sexual activity in different ways, with different attitudes about premarital sex, the age of sexual consent, homosexuality, masturbation, and other sexual behaviors (Widmer 1998).

A person’s **sexual orientation** is their physical, mental, emotional, and sexual attraction to a particular sex (male and/or female). Sexual orientation is typically divided into several categories: *heterosexuality*, the attraction to individuals of the other sex; *homosexuality*, the attraction to individuals of the same sex; *bisexuality*, the attraction to individuals of either sex; *asexuality*, a lack of sexual attraction or desire for sexual contact; *pansexuality*, an attraction to people regardless of sex, gender, gender identity, or gender expression; *omnisexuality*, an attraction to people of all sexes, genders, gender identities, and gender expressions that considers the person's gender, and *queer*, an umbrella term used to describe sexual orientation, gender identity or gender expression. Other categories may not refer to a sexual attraction, but rather a romantic one. For example, an *aromantic* person does not experience romantic attraction; this is different from asexuality, which refers to a lack of sexual attraction. And some sexual orientations do not refer to gender in their description, though those who identify as having that orientation may feel attraction to a certain gender. For example, *demisexual* refers to someone who feels a sexual attraction to someone only after they form an emotional bond; the term itself doesn't distinguish among gender identities, but the person may feel attraction based on gender (PFLAG 2021). It is important to acknowledge and understand that many of these orientations exist on on a spectrum, and there may be no specific term to describe how an individual feels. Some terms have been developed to address this—such as *graysexual* or *grayromantic*—but their usage is a personal choice (Asexual Visibility and Education Network 2021).

People who are attracted to others of a different gender are typically referred to as "straight," and people attracted to others of the same gender are typically referred to as "gay" for men and "lesbian" for women. As discussed, above, however, there are many more sexual and romantic orientations, so the term "gay," for example, should not be used to describe all of them. Proper terminology includes the acronyms LGBT and LGBTQ, which stands for “Lesbian, Gay, Bisexual, Transgender” (and “Queer” or “Questioning” when the Q is added). In other cases, people and organizations may add "I" to represent Intersex people (described below), and "A" for Asexual or Aromantic people (or sometimes for "Allies"), as well as one "P" to describe Pansexual people and sometimes another "P" to describe Polysexual people. Finally, some people and organizations add a plus sign (+) to represent other possible identities or orientations.

Sexuality and gender terminology are constantly changing, and may mean different things to different people; they are not universal, and each individual define them for themselves (UC Davis LGBTQIA Resource Center 2020). Finally, a person who does not fully understand all of these terms can still be supportive of people who have those orientations or others; in fact, advocacy and support organizations indicate it is much better to admit you don't know something than to make assumptions or apply an incorrect label to someone (GLAAD 2021).

While the descriptions above are evidence of a vast degree of diversity, the United States and many other countries are heteronormative societies, meaning many people assume **heterosexual** orientation is biologically determined and is the default or normal type of orientation. While awareness and acceptance of different sexual orientations and identities seems to be increasing, the influence of a heteronormative society can lead LGBTQ people to be treated like "others," even by people who do not deliberately seek to cause them harm. This can lead to significant distress (Boyer 2020). Causes of these heteronormative behaviors and expectations are tied to implicit biases; they can be especially harmful for children and young adults (Tompkins 2017).

There is not a wealth of research describing exactly when people become aware of their sexual orientation. According to current scientific understanding, individuals are usually aware of their sexual orientation between middle childhood and early adolescence (American Psychological Association 2008). They do not have to participate in sexual activity to be aware of these emotional, romantic, and physical attractions; people can be celibate and still recognize their sexual orientation, and may have very different experiences of discovering and accepting their sexual orientation. Some studies have shown that a percentage of people may start to have feelings related to attraction or orientation at ages nine or ten, even if these feelings are not sexual (Calzo 2018). At the point of puberty, some may be able to announce their sexual orientation, while others may be unready or unwilling to make their sexual orientation or identity known since it goes against society's historical norms (APA 2008). And finally, some people recognize their true sexual orientation later in life—in their 30s, 40s, and beyond.

There is no scientific consensus regarding the exact reasons why an individual holds a specific sexual orientation. Research has been conducted to study the possible genetic, hormonal, developmental, social, and cultural influences on sexual orientation, but there has been no evidence that links sexual orientation to one factor (APA 2008). Alfred Kinsey was among the first to conceptualize sexuality as a continuum rather than a strict dichotomy of gay or straight. He created a six-point rating scale that ranges from exclusively heterosexual to exclusively homosexual. See the figure below. In his 1948 work *Sexual Behavior in the Human Male*, Kinsey writes, "Males do not represent two discrete populations, heterosexual and homosexual. The world is not to be divided into sheep and goats… The living world is a continuum in each and every one of its aspects" (Kinsey 1948). Many of Kinsey's specific research findings have been criticized or discredited, but his influence on future research is widely accepted.

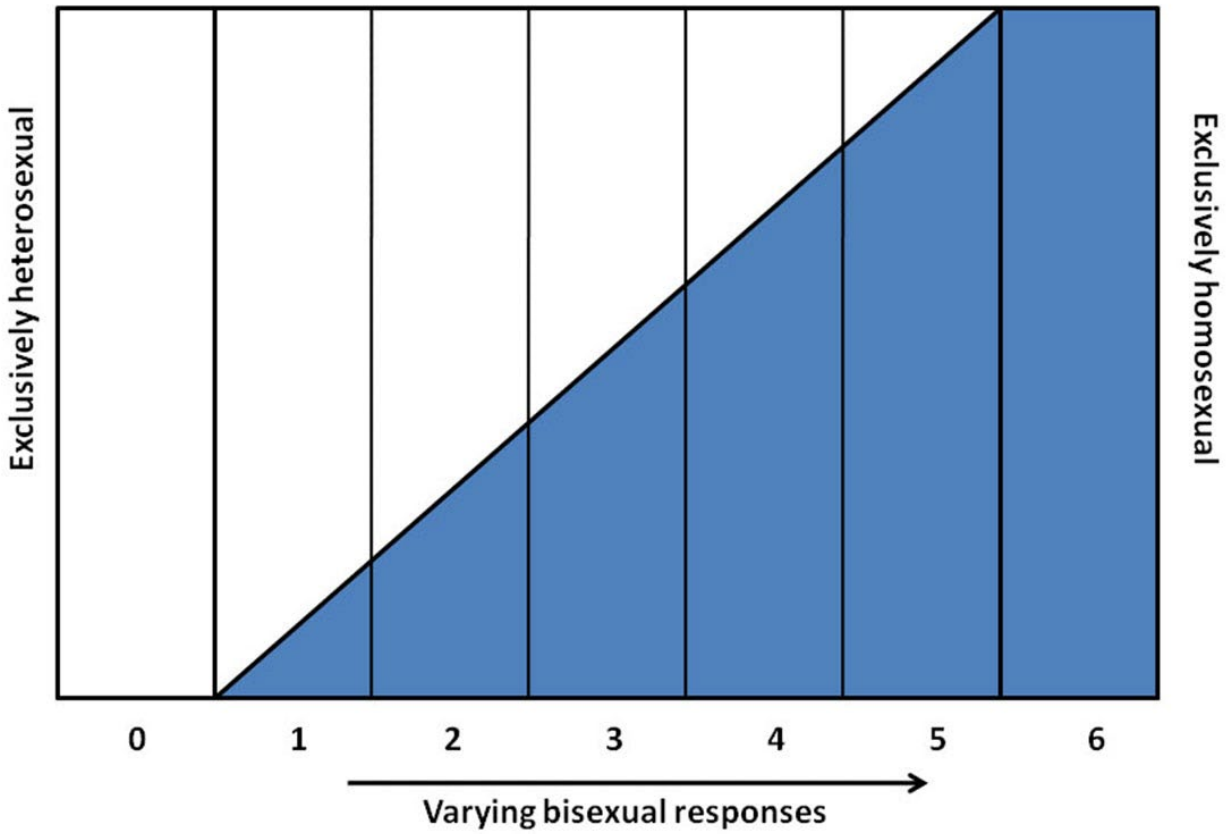

Figure 9.1.2: The Kinsey scale was one of the first attempts to frame the diversity of human sexual orientation.

Later scholarship by Eve Kosofsky Sedgwick expanded on Kinsey's notions. She coined the term "homosocial" to oppose "homosexual," describing nonsexual same-sex relations. Sedgwick recognized that in U.S. culture, males are subject to a clear divide between the two sides of this continuum, whereas females enjoy more fluidity. This can be illustrated by the way women in the United States can express homosocial feelings (nonsexual regard for people of the same sex) through hugging, handholding, and physical closeness. In contrast, U.S. males refrain from these expressions since they violate the heteronormative expectation that male sexual attraction should be exclusively for females. Research suggests that it is easier for women violate these norms than men, because men are subject to more social disapproval for being physically close to other men (Sedgwick 1985).

Because of the deeply personal nature of sexual orientation, as well as the societal biases against certain orientations, many people may question their sexual orientation before fully accepting it themselves. In a similar way, parents may question their children's sexual orientation based on certain behaviors. Simply viewing the many web pages and discussion forums dedicated to people expressing their questions makes it very clear that sexual orientation is not always clear. Feelings of guilt, responsibility, rejection, and simple uncertainty can make the process and growth very challenging. For example, a woman married to a man who recognizes that she is asexual, or a man married to a woman who recognizes that he is attracted to men, may both have

extreme difficulty coming to terms with their sexuality, as well as disclosing it to others. At younger ages, similarly challenging barriers and difficulties exist. For example, adolescence can be a difficult and uncertain time overall, and feelings of different or changing orientation or nonconformity can only add to the challenges (Mills-Koonce 2018).

Gender Roles

As we grow, we learn how to behave from those around us. In this socialization process, children are introduced to certain roles that are typically linked to their biological sex. The term **gender role** refers to society's concept of how men and women are expected to look and how they should behave. These roles are based on norms, or standards, created by society. In U.S. culture, masculine roles are usually associated with strength, aggression, and dominance, while feminine roles are usually associated with passivity, nurturing, and subordination. Role learning starts with socialization at birth. Even today, our society is quick to outfit male infants in blue and girls in pink, even applying these color-coded gender labels while a baby is in the womb.

One way children learn gender roles is through play. Parents typically supply boys with trucks, toy guns, and superhero paraphernalia, which are active toys that promote motor skills, aggression, and solitary play. Daughters are often given dolls and dress-up apparel that foster nurturing, social proximity, and role play. Studies have shown that children will most likely choose to play with "gender appropriate" toys (or same-gender toys) even when cross-gender toys are available because parents give children positive feedback (in the form of praise, involvement, and physical closeness) for gender normative behavior (Caldera, Huston, and O'Brien 1998). As discussed in the Socialization chapter, some parents and experts become concerned about young people becoming too attached to these stereotypical gender roles.

Figure 9.1.3: Childhood activities and instruction, like this father-daughter duck-hunting trip, can influence people's lifelong views on gender roles. (Credit: Tim Miller, USFWS Midwest Region/flickr)

The drive to adhere to masculine and feminine gender roles continues later in life, in a tendency sometimes referred to as "occupational sorting" (Gerdeman 2019). Men tend to outnumber women in professions such as law enforcement, the military, and politics. Women tend to outnumber men in care-related occupations such as childcare, healthcare (even though the term “doctor” still conjures the image of a man), and social work. These occupational roles are examples of typical U.S. male and female behavior, derived from our culture’s traditions. Adherence to these roles demonstrates fulfillment of social expectations but not necessarily personal preference (Diamond 2002); sometimes, people work in a profession because of societal pressure and/or the opportunities afforded to them based on their gender.

Historically, women have had difficulty shedding the expectation that they cannot be a "good mother" and a "good worker" at the same time, which results in fewer opportunities and lower levels of pay (Ogden 2019). Generally, men do not share this difficulty: Since the assumed role of a men as a fathers does not seem to conflict with their perceived work role, men who are fathers (or who are expected to become fathers) do not face the same barriers to employment or promotion (González 2019). This is sometimes referred to as the "motherhood penalty" versus the "fatherhood premium," and is prevalent in many higher-income countries (Bygren 2017). These concepts and their financial and societal implications will be revisited later in the chapter.

Gender Identity

U.S. society allows for some level of flexibility when it comes to acting out gender roles. To a certain extent, men can assume some feminine roles and women can assume some masculine roles without interfering with their gender identity. **Gender identity** is a person’s deeply held internal perception of one's gender.

Transgender people's sex assigned at birth and their gender identity are not necessarily the same. A transgender woman is a person who was assigned male at birth but who identifies and/or lives as a woman; a transgender man was assigned female at birth but lives as a man. While determining the size of the transgender population is difficult, it is estimated that 1.4 million adults (Herman 2016) and 2 percent of high school students in the U.S. identify as transgender (Johns 2019). The term "transgender" does not indicate sexual orientation or a particular gender expression, and we should avoid making assumptions about people's sexual orientation based on knowledge about their gender identity (GLAAD 2021).

Figure 9.1.4: Actress Laverne Cox is the first openly transgender person to play a transgender character on a major show. She won a producing Emmy and was nominated four times for the Best Actress Emmy. She is also an advocate for LGBTQ issues outside of her career, such as in this "Ain't I a Woman?" speaking tour. (Credit: modification of work by "KOMUnews_Flickr"/Flickr)

Some transgender individuals may undertake a process of transition, in which they move from living in a way that is more aligned with the sex assigned at birth to living in a way that is aligned with their gender identity. Transitioning may take the form of social, legal or medical aspects of someone's life, but not everyone undertakes any or all types of transition. Social transition may involve the person's presentation, name, pronouns, and relationships. Legal transition can include changing their gender on government or other official documents, changing their legal name, and so on. Some people may undergo a physical or medical transition, in which they change their outward, physical, or sexual characteristics in order for their physical being to better align with their gender identity (UCSF Transgender Care 2019). They may also be known as male-to-female (MTF) or female-to-male (FTM). Not all transgender individuals choose to alter their bodies: many will maintain their original anatomy but may present themselves to society as another gender. This is typically done by adopting the dress, hairstyle, mannerisms, or other characteristic typically assigned to another gender. It is important to note that people who cross-dress, or wear clothing that is traditionally assigned to a gender different from their biological sex, are not necessarily transgender. Cross-dressing is typically a form of self-expression or personal style, and it does not indicate a person's gender identity or that they are transgender (TSER 2021).

Figure 9.1.5: The most widely known transgender pride flag was designed by transgender woman and U.S. Navy veteran Monica Helms. Other designers have different interpretation of the transgender flag, and other groups within the LGBTQ community have their own flags and symbols. Interestingly, Gilbert Baker, the designer of the first widely adopted pride flag, made a point to avoid trademark or other limits on the flag, so that it could be reinterpreted and reused by others. (Credit: crudmucosa/flickr)

There is no single, conclusive explanation for why people are transgender. Transgender expressions and experiences are so diverse that it is difficult to identify their origin. Some hypotheses suggest biological factors such as genetics or prenatal hormone levels as well as social and cultural factors such as childhood and adulthood experiences. Most experts believe that all of these factors contribute to a person's gender identity (APA 2008).

Intersex is a general term used to describe people whose sex traits, reproductive anatomy, hormones, or chromosomes are different from the usual two ways human bodies develop. Some intersex traits are recognized at birth, while others are not recognizable until puberty or later in life (interACT 2021). While some intersex people have physically recognizable features that are described by specific medical terms, intersex people and newborns are healthy. Most in the medical and intersex community reject unnecessary surgeries intended to make a baby conform to a specific gender assignment; medical ethicists indicate that any surgery to alter intersex characteristics or traits—if desired—should be delayed until an individual can decide for themselves (Behrens 2021). If a physical trait or medical condition prohibits a baby from urinating or performing another bodily function (which is very rare), then a medical procedure such as surgery will be needed; in other cases, hormonal issues related to intersex characteristics may require medical intervention. Intersex and transgender are not interchangeable terms; many transgender people have no intersex traits, and many intersex people do not consider themselves transgender. Some intersex people believe that intersex people should be included within the LGBTQ community, while others do not (Koyama n.d.).

Those who identify with the sex they were assigned at birth are often referred to as *cisgender*, utilizing the Latin prefix "cis," which means "on the same side." (The prefix "trans" means "across.") Because they are in the majority and do not have a potential component to transition, many cisgender people do not self-identify as such. As with transgender people, the term or usage of cisgender does not indicate a person's sexual orientation, gender, or gender expression (TSER 2021). And as many societies are heteronormative, they are also *cisnormative*, which is the assumption or expectation that everyone is cisgender, and that anything other than cisgender is not normal.

The language of sexuality, sexual orientation, gender identity, and gender expression is continually changing and evolving. In order to get an overview of some of the most commonly used terms, explore the Trans Student Educational Resources Online Glossary: http://openstax.org/r/tsero

When individuals do not feel comfortable identifying with the gender associated with their biological sex, then they may experience gender dysphoria. **Gender dysphoria** is a diagnostic category in the fifth edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-5) that describes individuals who do not identify as the gender that most people would assume they are. This dysphoria must persist for at least six months and result in significant distress or dysfunction to meet DSM-5 diagnostic criteria. In order for children to be assigned this diagnostic category, they must verbalize their desire to become the other gender. It is important to note that not all transgender people experience gender dysphoria, and that its diagnostic categorization is not universally accepted. For example, in 2019, the World Health Organization reclassified “gender identity disorder” as “gender incongruence,” and categorized it under sexual health rather than a mental disorder. However, health and mental health professionals indicate that the presence of the diagnostic category does assist in supporting those who need treatment or help.

People become aware that they may be transgender at different ages. Even if someone does not have a full (or even partial) understanding of gender terminology and its implications, they can still develop an awareness that their gender assigned at birth does not align with their gender identity. Society, particularly in the United States, has been reluctant to accept transgender identities at any age, but we have particular difficulty accepting those identities in children. Many people feel that children are too young to understand their feelings, and that they may "grow out of it." And it is true that some children who verbalize their identification or desire to live as another gender may ultimately decide to live in alignment with their assigned gender. But if a child consistently describes themselves as a gender (or as both genders) and/or expresses themselves as that gender over a long period of time, their feelings cannot be attributed to going through a "phase" (Mayo Clinic 2021).

Some children, like many transgender people, may feel pressure to conform to social norms, which may lead them to suppress or hide their identity. Experts find evidence of gender dysphoria—the long-term distress associated with gender identification—in children as young as seven (Zaliznyak 2020). Again, most children have a limited understanding of the social and societal impacts of being transgender, but they can feel strongly that they are not aligned with their assigned sex. And considering that many transgender people do not come out or begin to

transition until much later in life—well into their twenties—they may live for a long time under that distress.

Discrimination Against LGBTQ people

Recall from the chapter on Crime and Deviance that the FBI's hate crime data indicates that crimes against LGBTQ people have been increasing, and that those crimes account for nearly one in five hate crimes committed in the United States (FBI 2020). While the disbanding of anti-LGBTQ laws in the United States has reduced government or law enforcement oppression or abuse, it has not eliminated it. In other countries, however, LGBTQ people can face even more danger. Reports from the United Nations, Human Rights Watch, and the International Lesbian, Gay, Trans, and Intersex Association (ILGA) indicate that many countries impose penalties for same-sex relationships, gender non-comformity, and other acts deemed opposed to the cultural or religious observances of the nation. As of 2020, six United Nations members imposed the death penalty for consensual same-sex acts, and another 61 countries penalized same-sex acts, through jail time, corporal punishment (such as lashing), or other measures. These countries include prominent United States allies such as the United Arab Emirates and Saudi Arabia (both of which can legally impose the death penalty for same-sex acts). Some nearby nations criminalize same-sex relations: Barbados can impose lifetime imprisonment for same-sex acts, and Jamaica, St. Kitts and Nevis, and Saint Lucia have lesser penalties, though Saint Lucia's government indicates it does not enforce those laws (ILGA 2020). Even when the government criminal code does not formalize anti-LGBTQ penalties, local ordinances or government agents may have wide discretion. For example, many people fleeing Central American countries do so as a result of anti-LGBTQ violence, sometimes at the hands of police (Human Rights Watch 2020).

Such severe treatment at the hands of the government is no longer the case in the United States. But until the 1960s and 1970s, every state in the country criminalized same-sex acts, which allowed the military to dishonorably discharge gay veterans (stripping them of all benefits) and law enforcement agencies to investigate and detain people suspected of same-sex acts. Police regularly raided bars and clubs simply for allowing gay and lesbian people to dance together. Public decency laws allowed police to arrest people if they did not wear clothing aligning with the typical dress for their biological sex. Criminalization of same-sex acts began to unravel at the state level in the 1960's and 1970s, and was fully invalidated in a 2003 Supreme Court decision.

Hate crimes and anti-LGBTQ legislation are overt types of discrimination, but LGBTQ people are also treated differently from straight and cisgender people in schools, housing, and in healthcare. This can have effects on mental health, employment and financial opportunities, and relationships. For example, more than half of LGBTQ adults and 70 percent of those who are transgender or gender non-conforming report experiencing discrimination from a health care professional; this leads to delays or reluctance in seeking care or preventative visits, which has negative health outcomes (American Heart Association 2020). Similarly, elderly LGBTQ people are far less likely to come out to healthcare professionals than are straight or cisgender people, which may also lead to healthcare issues at an age that is typically highly reliant on medical care (Foglia 2014).

Much of this discrimination is based on stereotypes and misinformation. Some is based on **heterosexism**, which Herek (1990) suggests is both an ideology and a set of institutional practices that privilege straight people and heterosexuality over other sexual orientations. Much like racism and sexism, heterosexism is a systematic disadvantage embedded in our social institutions, offering power to those who conform to heterosexual orientation while simultaneously disadvantaging those who do not. *Homophobia*, an extreme or irrational aversion to gay, lesbian, bisexual, or all LGBTQ people, which often manifests as prejudice and bias. *Transphobia* is a fear, hatred, or dislike of transgender people, and/or prejudice and discrimination against them by individuals or institutions.

Fighting Discrimination and Being an Ally

Figure 9.1.6: Hashtags, pride parades, and other activism are important elements of supporting LGBTQ people, but most experts and advocates agree that some of the most important steps are ones taken internally to better educate ourselves, and on interpersonal levels with friends, coworkers, and family members. (Credit: Lars Verket/flickr)

Major policies to prevent discrimination based on sexual orientation have not come into effect until recent years. In 2011, President Obama overturned "don't ask, don't tell," a controversial policy that required gay and lesbian people in the US military to keep their sexuality undisclosed. In 2015, the Supreme Court ruled in the case of *Obgerfell vs. Hodges* that the right to civil marriage was guaranteed to same-sex couples. And, as discussed above, in the landmark 2020 Supreme Court decision added sexual orientation and gender identity as categories protected from employment discrimination by the Civil Rights Act. At the same time, laws passed in

several states permit some level of discrimination against same-sex couples and other LGBTQ people based on a person's individual religious beliefs or prejudices.

Supporting LGTBQ people requires effort to better understand them without making assumptions. Understand people by listening, respecting them, and by remembering that every person—LGBTQ or otherwise— is different. Being gay, lesbian, bisexual, transgender, queer, intersex, or asexual is not a choice, but the way a person expresses or reveals that reality is their choice. Your experience or knowledge of other LGBTQ people (even your own experience if you are LGBTQ) cannot dictate how another person feels or acts. Finally, as discussed in the Race and Ethnicity chapter, intersectionality means that people are defined by more than their gender identity and sexual orientation. People from different age groups, races, abilities, and experiences within the LGTBQ community have different perspectives and needs.

While each individual has their own perspective, respecting their feelings and protecting their equality and wellbeing does have some common elements. These include referring to a person as they would like to be referred to, including the avoidance of abbreviations or slang terms unless you are sure they accept them. For example, many people and organizations (including those referenced in this chapter) use the abbreviation "trans" to represent transgender people, but a non-transgender person should not use that abbreviation unless they know the person or subject is comfortable with it. Respect also includes people's right to privacy: One person should never out a person to someone else or assume that someone is publicly out. LGBTQ allies can support everyone's rights to be equal and empowered members of society, including within organizations, institutions, and even individual classrooms.

Supporting others may require a change in mindset and practice. For example, if a transgender person wants to be referred to by a different name, or use different pronouns, it might take some getting used to, especially if you have spent years referring to the person by another name or by other pronouns. However, making the change is worthwhile and not overly onerous.

You can learn more about being an ally through campus, government, and organizational resources like the Human Rights Campaign's guide https://www.hrc.org/resources/being-an-lgbtq-ally

Language is an important part of culture, and it has been evolving to better include and describe people who are not gender-binary. In many languages, including English, pronouns are gendered. That is, pronouns are intended to identify the gender of the individual being referenced. English has traditionally been binary, providing only “he/him/his,” for male subjects and “she/her/hers,” for female subjects.

This binary system excludes those who identify as neither male nor female. The word “they,” which was used for hundreds of years as a singular pronoun, is more inclusive. As a result, in fact, Merriam Webster selected this use of “they” as Word of the Year for 2019. “They” and other pronouns are now used to reference those who do not identify as male or female on the spectrum of gender identities.

Gender-inclusive language has impacts beyond personal references. In biology, anatomy, and healthcare, for example, people commonly refer to organs or processes with gender associations. However, more accurate and inclusive language avoids such associations. For example, *women* do not produce eggs; *ovaries* produce eggs. *Men* are not more likely to be color-blind; those with *XY chromosomes* are more likely to be color blind (Gender Inclusive Biology 2019).

Beyond the language of gender, the language of society and culture itself can be either a barrier or an opening to inclusivity. Societal norms are important sociological concepts, and behaviors outside of those norms can lead to exclusion. By disassociating gender identity, gender expression, and sexual orientation from the concept of norms, we can begin to eliminate the implicit and explicit biases regarding those realities. In everyday terms, this can take the form of avoiding references to what is normal or not normal in regard to sexuality or gender (Canadian Public Health Association 2019).

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9.2: Sexual Identification and Orientation

Learning Objectives

By the end of this section, you will be able to:

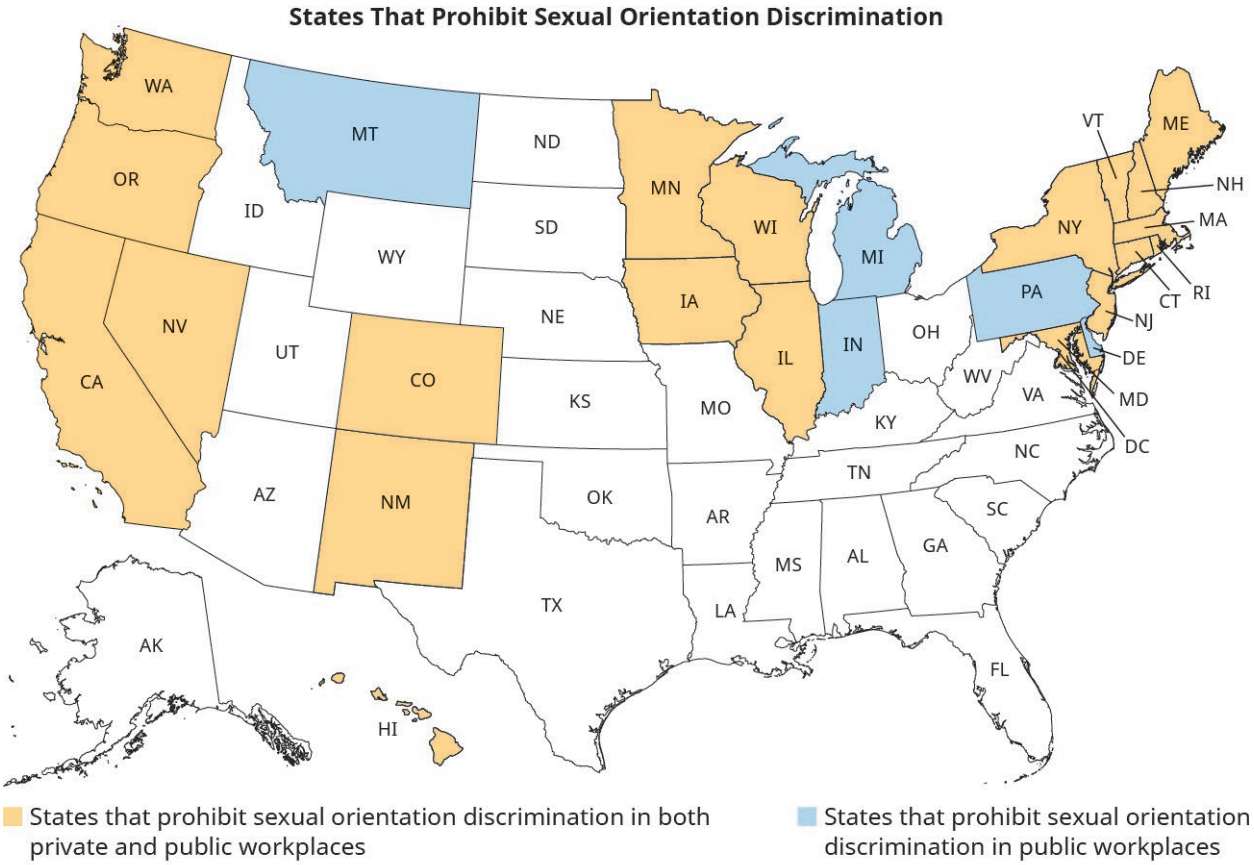
1. Explain how sexual identification and orientation are protected by law
2. Discuss the ethical issues raised in the workplace by differences in sexual identification and orientation

As society expands its understanding and appreciation of sexual orientation and identity, companies and managers must adopt a more inclusive perspective that keeps pace with evolving norms. Successful managers are those who willing to create a more welcoming work environment for all employees, given the wide array of sexual orientations and identities evident today.

Legal Protections

Workplace discrimination in this area means treating someone differently solely because of his or her sexual identification or sexual orientation, which can include, but is not limited to, identification as gay or lesbian (homosexual), bisexual, transsexual, or straight (heterosexual). Discrimination may also be based on an individual's association with someone of a different sexual orientation. Forms that such discrimination may take in the workplace include denial of opportunities, termination, and sexual assault, as well as the use of offensive terms, stereotyping, and other harassment.

Although the U.S. Supreme Court ruled in *United States v. Windsor* (2013) that Section 3 of the 1996 Defense of Marriage Act (which had restricted the federal interpretations of "marriage" and "spouse" to opposite-sex unions) was unconstitutional, and guaranteed same-sex couples the right to marry in *Obergefell v. Hodges* (2015), marital status has little or no direct applicability to the circumstances of someone's employment. In terms of legal protections at work, the LGBTQ community had been at a disadvantage because Title VII of the CRA was not interpreted to address sexual orientation and federal law did not prohibit discrimination based on this characteristic. In the 2020 Supreme Court case *Bostock v. Clayton County*, the Court held that discrimination based on "sex" includes discrimination based on sexual orientation and gender identity.



Source: "Sexual Orientation Discrimination in the Workplace." *FindLaw*. http://employment.findlaw.com/employment-discrimination/sexual-orientation-discrimination-in-the-workplace.html.

Figure \(\PageIndex{1}\): In addition to federal laws, many states have laws that provide protections and guarantees to LGBTQ people. (attribution: Copyright Rice University, OpenStax, under CC BY 4.0 license)

While the 2020 Supreme Court decision extended protection in terms of employment considerations, discrimination in other forms remains. For example, a proposed law named the Equality Act is a federal LGBTQ nondiscrimination bill that would provide protections for LGBTQ individuals in employment, housing, credit, and education. But unless and until it passes, it remains up to the business community to provide protections consistent with those provided under federal law for other employees or applicants.

Ethical Considerations

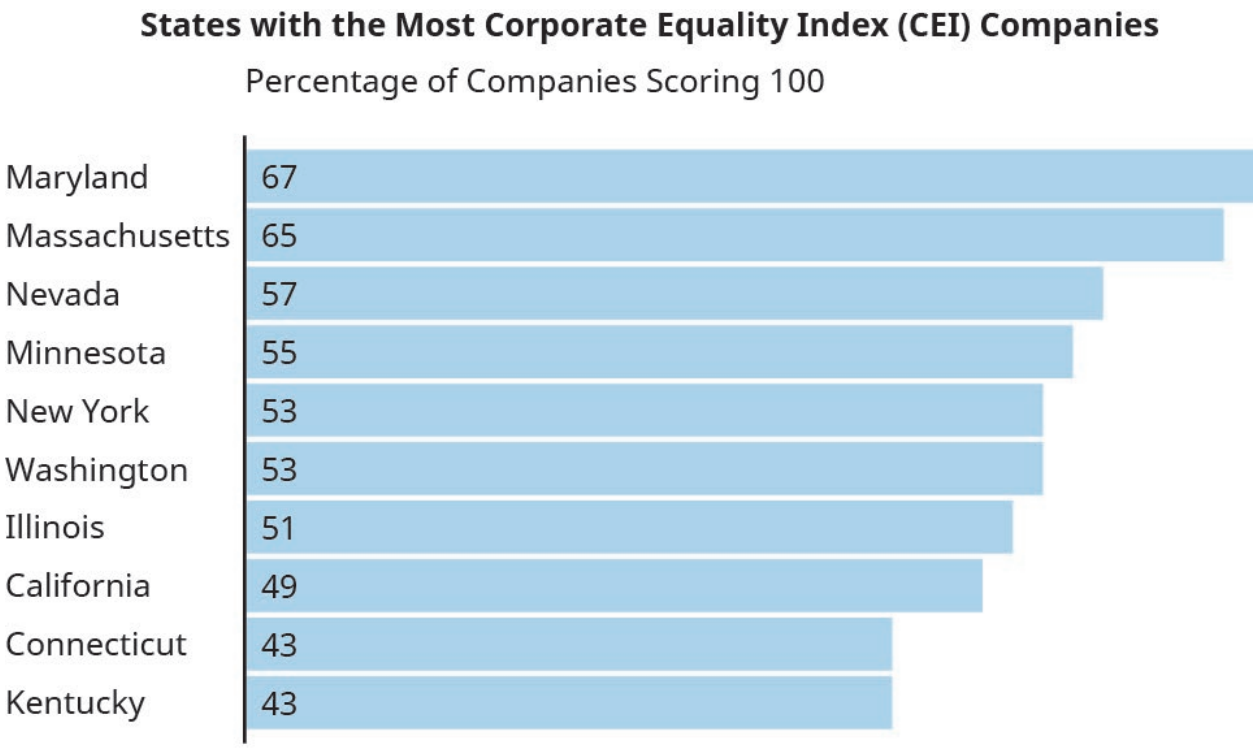
In the absence of a specific law, LGBTQ issues present a unique opportunity for ethical leadership. Many companies choose to do the ethically and socially responsible thing and treat all workers equally, for example, by extending the same benefits to same-sex partners that they extend to opposite-sex spouses. Ethical leaders are also willing to listen and be considerate when dealing with employees who may still be coming to an understanding of their sexual identification.

Financial and performance-related considerations come into play as well. Denver Investments recently analyzed the stock performance of companies before and after their adoption of

LGBTQ-inclusive workplace policies. The number of companies outperforming their peers in various industries increased after companies adopted LGBTQ-inclusive workplace policies. Once again, being ethical does not mean losing money or performing poorly.

In fact, states that have passed legislation considered anti-LGBTQ by the wider U.S. community, such as the Religious Freedom Restoration Act in Indiana or North Carolina's H.B. 2, the infamous "bathroom bill" that would require transgender individuals to use the restroom corresponding with their birth certificate, have experienced significant economic pushback. These states have seen statewide and targeted boycotts by consumers, major corporations, national organizations such as the National Collegiate Athletic Association, and even other cities and states. In 2016, in response to H.B. 2, nearly seventy large U.S. companies, including American Airlines, Apple, DuPont, General Electric, IBM, Morgan Stanley, and Wal-Mart, signed an amicus ("friend of the court") brief in opposition to the unpopular North Carolina bill. In 2017, the North Carolina legislature replaced the law, and a 2019 court settlement substantially altered it; however, the remaining North Carolina law limits local municipalities' protections for LGBTQ people. Indiana's Religious Freedom Restoration Act evoked a similar backlash in 2015 and public criticism from U.S. businesses.

To assess LGBTQ equality policies at a corporate level, the Human Rights Campaign foundation publishes an annual Corporate Equality Index (CEI) of approximately one thousand large U.S. companies and scores each on a scale of 0 to 100 on the basis of how LGBTW-friendly its benefits and employment policies are. More than six hundred companies recently earned a perfect score in the 2018 CEI, including such household names as AT&T, Boeing, Coca-Cola, Gap Inc., General Motors, Johnson & Johnson, Kellogg, United Parcel Service, and Xerox.



Source: Brant, Bobbi. "Best States to be Gay in Corporate America." Expert Market. (Based on data from Human Rights Foundation CEI 2015 and Human Rights Foundation SEI 2014.)

Figure \(\PageIndex{2}\): The Human Rights Campaign Foundation publishes an annual Corporate Equality Index to assess the LGBTQ equality policies of major U.S. corporations. A perfect score on the index is 100. These are the ten states with the highest percentages of "100 score" companies as of 2014–2015. (attribution: Copyright Rice University, OpenStax, under CC BY 4.0 license)

LINK TO LEARNING

Read the Human Rights Campaign's 2018 report (HRC | Corporate Equality Index 2026) for more on the Human Rights Campaign's CEI and its criteria.

Another organization tracking LGBTQ equality and inclusion in the workplace is the National LGBT Chamber of Commerce, which issues third-party certification for businesses that are majority-owned by LGBT individuals. There are currently more than one thousand LGBT-certified business enterprises across the country, although California, New York, Texas, Florida, and Georgia account for approximately 50 percent of them. Although these are all top-ranked states for new business startups in general, they are also home to multiple Fortune 500 companies whose diversity programs encourage LGBT-certified businesses to become part of their supply chains. Examples of large LGBT-friendly companies with headquarters in these states are American Airlines, JPMorgan Chase, SunTrust Bank, and Pacific Gas & Electric.

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9.3: Video: Why the “Born This Way” Argument Doesn’t Advance LGBT Equality

Lady Gaga has said it. The Pope has said it. But are people really born gay? Lisa Diamond, a professor of psychology and gender studies, deconstructs the "Born This Way" argument and shows why it doesn't advance LGBT equality.

https://www.youtube.com/watch?v=RjX-KBPmgg4

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9.4: Case Study: AEON Global Health to Pay $56,000 to Settle EEOC Race and Sex Harassment and Retaliation Suit

Client Services Employee Subjected to Hostile Work Environment And Then Fired for Reporting It, Federal Agency Charged

ATLANTA – Peachstate Health Management, LLC, doing business as AEON Global Health, a Georgia-certified reference clinical laboratory in Gainesville, Georgia, will pay $56,000 and provide other relief to settle a race- and sex-based harassment and retaliation lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC).

According to the EEOC's lawsuit, a female supervisor at AEON subjected one of its African American female client services employees to daily race- and sex-based verbal harassment. The employee reported the harassment to the company on a weekly basis for more than two months. The employee's reports of harassment culminated in a meeting with upper-level executives where the employee's reports of race- and sex-based harassment were raised. During this meeting, AEON subjected the employee to additional sex-based verbal harassment and then fired her, according to the EEOC's complaint.

This alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits race- and sex-based harassment in the workplace and prohibits employers from firing, demoting, harassing or otherwise retaliating against employees because of complaints of discrimination or harassment. The EEOC filed suit (Civil Action No. 2:21-cv-00092-RWS-JCF) in U.S. District Court for the Northern District of Georgia, Gainesville Division, after first attempting to reach a pre-litigation settlement via its conciliation process.

Under the consent decree resolving the lawsuit, AEON will pay $56,000 in monetary damages to the employee. The company will also conduct regular reporting, monitoring, annual training, dissemination of anti-discrimination policies to employees and managers, and notice posting.

"Sex- and race-based harassment continues to be a problem in the workplace," said Marcus G. Keegan, regional attorney for the EEOC's Atlanta District Office. "Additionally, an employee's right to complain about discriminatory harassment is critical to addressing these problems. Employers must recognize the importance of responding appropriately and effectively to their employee's complaints. The EEOC is pleased that AEON agreed to implement training on its anti-discrimination policies to prevent discrimination from occurring there again."

Darrell Graham, district director of the Atlanta office, added, "No employee should have to endure sex- and race-based harassment in order to earn a living. The EEOC will take appropriate action to protect workers from such mistreatment if an employer fails to do so."

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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10.1: Religion

- 10.1.1: Introduction to Religion
- 10.1.2: The Sociological Approach to Religion
- 10.1.3: World Religions
- 10.1.4: Religion in the United States

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10.1.1: Introduction to Religion

Figure 10.1.1.1: Religions come in many forms, such as this large megachurch. (Photo courtesy of ToBeDaniel/Wikimedia Commons)

Why do sociologists study religion? For centuries, humankind has sought to understand and explain the "meaning of life." Many philosophers believe this contemplation and the desire to understand our place in the universe are what differentiate humankind from other species. Religion, in one form or another, has been found in all human societies since human societies first appeared. Archaeological digs have revealed ritual objects, ceremonial burial sites, and other religious artifacts. Social conflict and even wars often result from religious disputes. To understand a culture, sociologists must study its religion.

What is religion? Pioneer sociologist Émile Durkheim described it with the ethereal statement that it consists of "things that surpass the limits of our knowledge" (1915). He went on to elaborate: Religion is "a unified system of beliefs and practices relative to sacred things, that is to say set apart and forbidden, beliefs and practices which unite into one single moral community, called a church, all those who adhere to them" (1915). Some people associate religion with places of worship (a synagogue or church), others with a practice (confession or meditation), and still others with a concept that guides their daily lives (like dharma or sin). All these people can agree that **religion** is a system of beliefs, values, and practices concerning what a person holds sacred or considers to be spiritually significant.

Does religion bring fear, wonder, relief, explanation of the unknown, or control over freedom and choice? How do our religious perspectives affect our behavior? These are questions sociologists ask and are reasons they study religion. What are peoples' conceptions of the profane and the sacred? How do religious ideas affect the real-world reactions and choices of people in a society?

Religion can also serve as a filter for examining other issues in society and other components of a culture. For example, after the terrorist attacks of September 11, 2001, it became important for teachers, church leaders, and the media to educate Americans about Islam to prevent stereotyping and to promote religious tolerance. Sociological tools and methods, such as surveys, polls, interviews, and analysis of historical data, can be applied to the study of religion in a culture to help us better understand the role religion plays in people's lives and the way it influences society.

GLOSSARY

religion

a system of beliefs, values, and practices concerning what a person holds to be sacred or spiritually significant

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10.1.2: The Sociological Approach to Religion

Learning Objectives

By the end of this section, you will be able to:

1. Discuss the historical view of religion from a sociological perspective
2. Understand how the major sociological paradigms view religion

From the Latin *religio* (respect for what is sacred) and *religare* (to bind, in the sense of an obligation), the term religion describes various systems of belief and practice that define what people consider to be sacred or spiritual (Fasching and deChant 2001; Durkheim 1915). Throughout history, and in societies across the world, leaders have used religious narratives, symbols, and traditions in an attempt to give more meaning to life and understand the universe. Some form of religion is found in every known culture, and it is usually practiced in a public way by a group. The practice of religion can include feasts and festivals, intercession with God or gods, marriage and funeral services, music and art, meditation or initiation, sacrifice or service, and other aspects of culture.

While some people think of religion as something individual because religious beliefs can be highly personal, religion is also a social institution. Social scientists recognize that religion exists as an organized and integrated set of beliefs, behaviors, and norms centered on basic social needs and values. Moreover, religion is a cultural universal found in all social groups. For instance, in every culture, funeral rites are practiced in some way, although these customs vary between cultures and within religious affiliations. Despite differences, there are common elements in a ceremony marking a person's death, such as announcement of the death, care of the deceased, disposition, and ceremony or ritual. These universals, and the differences in the way societies and individuals experience religion, provide rich material for sociological study.

In studying religion, sociologists distinguish between what they term the experience, beliefs, and rituals of a religion. **Religious experience** refers to the conviction or sensation that we are connected to "the divine." This type of communion might be experienced when people pray or meditate. **Religious beliefs** are specific ideas members of a particular faith hold to be true, such as that Jesus Christ was the son of God, or that reincarnation exists. Another illustration of religious beliefs is the creation stories we find in different religions. **Religious rituals** are behaviors or practices that are either required or expected of the members of a particular group, such as bar mitzvah or confession of sins (Barkan and Greenwood 2003).

The History of Religion as a Sociological Concept

In the wake of nineteenth-century European industrialization and secularization, three social theorists attempted to examine the relationship between religion and society: Émile Durkheim, Max Weber, and Karl Marx. They are among the founding thinkers of modern sociology.

As stated earlier, French sociologist Émile Durkheim (1858–1917) defined religion as a "unified system of beliefs and practices relative to sacred things" (1915). To him, sacred meant extraordinary—something that inspired wonder and that seemed connected to the concept of "the

divine." Durkheim argued that "religion happens" in society when there is a separation between the profane (ordinary life) and the sacred (1915). A rock, for example, isn't sacred or profane as it exists. But if someone makes it into a headstone, or another person uses it for landscaping, it takes on different meanings—one sacred, one profane.

Durkheim is generally considered the first sociologist who analyzed religion in terms of its societal impact. Above all, he believed religion is about community: It binds people together (social cohesion), promotes behavior consistency (social control), and offers strength during life's transitions and tragedies (meaning and purpose). By applying the methods of natural science to the study of society, Durkheim held that the source of religion and morality is the collective mindset of society and that the cohesive bonds of social order result from common values in a society. He contended that these values need to be maintained to maintain social stability.

But what would happen if religion were to decline? This question led Durkheim to posit that religion is not just a social creation but something that represents the power of society: When people celebrate sacred things, they celebrate the power of their society. By this reasoning, even if traditional religion disappeared, society wouldn't necessarily dissolve.

Whereas Durkheim saw religion as a source of social stability, German sociologist and political economist Max Weber (1864–1920) believed it was a precipitator of social change. He examined the effects of religion on economic activities and noticed that heavily Protestant societies—such as those in the Netherlands, England, Scotland, and Germany—were the most highly developed capitalist societies and that their most successful business leaders were Protestant. In his writing *The Protestant Work Ethic and the Spirit of Capitalism* (1905), he contends that the Protestant work ethic influenced the development of capitalism. Weber noted that certain kinds of Protestantism supported the pursuit of material gain by motivating believers to work hard, be successful, and not spend their profits on frivolous things. (The modern use of "work ethic" comes directly from Weber's Protestant ethic, although it has now lost its religious connotations.)

THE PROTESTANT WORK ETHIC IN THE INFORMATION AGE

Max Weber (1904) posited that, in Europe in his time, Protestants were more likely than Catholics to value capitalist ideology, and believed in hard work and savings. He showed that Protestant values directly influenced the rise of capitalism and helped create the modern world order. Weber thought the emphasis on community in Catholicism versus the emphasis on individual achievement in Protestantism made a difference. His century-old claim that the Protestant work ethic led to the development of capitalism has been one of the most important and controversial topics in the sociology of religion. In fact, scholars have found little merit to his contention when applied to modern society (Greeley 1989).

What does the concept of work ethic mean today? The work ethic in the information age has been affected by tremendous cultural and social change, just as workers in the mid- to late-nineteenth-century were influenced by the wake of the Industrial Revolution. Factory jobs tend to be simple, uninvolved, and require very little thinking or decision-making on the part of the

worker. Today, the work ethic of the modern workforce has been transformed, as more thinking and decision making is required. Employees also seek autonomy and fulfillment in their jobs, not just wages. Higher levels of education have become necessary, as well as people management skills and access to the most recent information on any given topic. The information age has increased the rapid pace of production expected in many jobs.

On the other hand, the "McDonaldization" of the United States (Hightower 1975; Ritzer 1993), in which many service industries, such as the fast-food industry, have established routinized roles and tasks, has resulted in a "discouragement" of the work ethic. In jobs where roles and tasks are highly prescribed, workers have no opportunity to make decisions. They are considered replaceable commodities as opposed to valued employees. During times of recession, these service jobs may be the only employment possible for younger individuals or those with low-level skills. The pay, working conditions, and robotic nature of the tasks dehumanizes the workers and strips them of incentives for doing quality work.

Working hard also doesn't seem to have any relationship with Catholic or Protestant religious beliefs anymore, or those of other religions; information age workers expect talent and hard work to be rewarded by material gain and career advancement.

German philosopher, journalist, and revolutionary socialist Karl Marx (1818–1883) also studied the social impact of religion. He believed religion reflects the social stratification of society and that it maintains inequality and perpetuates the status quo. For him, religion was just an extension of working-class (proletariat) economic suffering. He famously argued that religion "is the opium of the people" (1844).

For Durkheim, Weber, and Marx, who were reacting to the great social and economic upheaval of the late nineteenth century and early twentieth century in Europe, religion was an integral part of society. For Durkheim, religion was a force for cohesion that helped bind the members of society to the group, while Weber believed religion could be understood as something separate from society. Marx considered religion inseparable from the economy and the worker. Religion could not be understood apart from the capitalist society that perpetuated inequality. Despite their different views, these social theorists all believed in the centrality of religion to society.

Theoretical Perspectives on Religion

Figure 10.1.2.1: Functionalists believe religion meets many important needs for people, including group cohesion and companionship. (Photo courtesy of James Emery/flickr)

Modern-day sociologists often apply one of three major theoretical perspectives. These views offer different lenses through which to study and understand society: functionalism, symbolic interactionism, and conflict theory. Let's explore how scholars applying these paradigms understand religion.

Functionalism

Functionalists contend that religion serves several functions in society. Religion, in fact, depends on society for its existence, value, and significance, and vice versa. From this perspective, religion serves several purposes, like providing answers to spiritual mysteries, offering emotional comfort, and creating a place for social interaction and social control.

In providing answers, religion defines the spiritual world and spiritual forces, including divine beings. For example, it helps answer questions like, "How was the world created?" "Why do we suffer?" "Is there a plan for our lives?" and "Is there an afterlife?" As another function, religion provides emotional comfort in times of crisis. Religious rituals bring order, comfort, and organization through shared familiar symbols and patterns of behavior.

One of the most important functions of religion, from a functionalist perspective, is the opportunities it creates for social interaction and the formation of groups. It provides social support and social networking and offers a place to meet others who hold similar values and a place to seek help (spiritual and material) in times of need. Moreover, it can foster group cohesion and integration. Because religion can be central to many people's concept of themselves, sometimes there is an "in-group" versus "out-group" feeling toward other religions in our society or within a particular practice. On an extreme level, the Inquisition, the Salem witch trials, and anti-Semitism are all examples of this dynamic. Finally, religion promotes social control: It reinforces social norms such as appropriate styles of dress, following the law, and regulating sexual behavior.

Conflict Theory

Conflict theorists view religion as an institution that helps maintain patterns of social inequality. For example, the Vatican has a tremendous amount of wealth, while the average income of Catholic parishioners is small. According to this perspective, religion has been used to support the "divine right" of oppressive monarchs and to justify unequal social structures, like India's caste system.

Figure 10.1.2.2: Many religions, including the Catholic faith, have long prohibited women from becoming spiritual leaders. Feminist theorists focus on gender inequality and promote leadership roles for women in religion. (Photo courtesy of Wikimedia Commons)

Conflict theorists are critical of the way many religions promote the idea that believers should be satisfied with existing circumstances because they are divinely ordained. This power dynamic has been used by Christian institutions for centuries to keep poor people poor and to teach them that they shouldn't be concerned with what they lack because their "true" reward (from a religious perspective) will come after death. Conflict theorists also point out that those in power

in a religion are often able to dictate practices, rituals, and beliefs through their interpretation of religious texts or via proclaimed direct communication from the divine.

The feminist perspective is a conflict theory view that focuses specifically on gender inequality. In terms of religion, feminist theorists assert that, although women are typically the ones to socialize children into a religion, they have traditionally held very few positions of power within religions. A few religions and religious denominations are more gender-equal, but male dominance remains the norm of most.

RATIONAL CHOICE THEORY: CAN ECONOMIC THEORY BE APPLIED TO RELIGION?

How do people decide which religion to follow, if any? How does one pick a church or decide which denomination "fits" best? Rational choice theory (RCT) is one-way social scientists have attempted to explain these behaviors. The theory proposes that people are self-interested, though not necessarily selfish, and that people make rational choices—choices that can reasonably be expected to maximize positive outcomes while minimizing negative outcomes. Sociologists Roger Finke and Rodney Stark (1988) first considered the use of RCT to explain some aspects of religious behavior, with the assumption that there is a basic human need for religion in terms of providing belief in a supernatural being, a sense of meaning in life, and belief in life after death. Religious explanations of these concepts are presumed to be more satisfactory than scientific explanations, which may help to account for the continuation of strong religious connectedness in countries such as the United States, despite predictions of some competing theories for a great decline in religious affiliation due to modernization and religious pluralism.

Another assumption of RCT is that religious organizations can be viewed in terms of "costs" and "rewards." Costs are not only monetary requirements, but are also the time, effort, and commitment demands of any particular religious organization. Rewards are the intangible benefits in terms of belief and satisfactory explanations about life, death, and the supernatural, as well as social rewards from membership. RCT proposes that, in a pluralistic society with many religious options, religious organizations will compete for members, and people will choose between different churches or denominations in much the same way they select other consumer goods, balancing costs and rewards in a rational manner. In this framework, RCT also explains the development and decline of churches, denominations, sects, and even cults; this limited part of the very complex RCT theory is the only aspect well supported by research data.

Critics of RCT argue that it doesn't fit well with human spiritual needs, and many sociologists disagree that the costs and rewards of religion can even be meaningfully measured or that individuals use a rational balancing process regarding religious affiliation. The theory doesn't address many aspects of religion that individuals may consider essential (such as faith) and further fails to account for agnostics and atheists who don't seem to have a similar need for religious explanations. Critics also believe this theory overuses economic terminology and structure and point out that terms such as "rational" and "reward" are unacceptably defined by their use; they would argue that the theory is based on faulty logic and lacks external, empirical support. A scientific explanation for *why* something occurs can't reasonably be supported by the fact that it *does* occur. RCT is widely used in economics and to a lesser extent in criminal justice,

but the application of RCT in explaining the religious beliefs and behaviors of people and societies is still being debated in sociology today.

Symbolic Interactionism

Rising from the concept that our world is socially constructed, symbolic interactionism studies the symbols and interactions of everyday life. To interactionists, beliefs and experiences are not sacred unless individuals in a society regard them as sacred. The Star of David in Judaism, the cross in Christianity, and the crescent and star in Islam are examples of sacred symbols. Interactionists are interested in what these symbols communicate. Because interactionists study one-on-one, everyday interactions between individuals, a scholar using this approach might ask questions focused on this dynamic. The interaction between religious leaders and practitioners, the role of religion in the ordinary components of everyday life, and the ways people express religious values in social interactions—all might be topics of study to an interactionist.

SUMMARY

Religion describes the beliefs, values, and practices related to sacred or spiritual concerns. Social theorist Émile Durkheim defined religion as a "unified system of beliefs and practices relative to sacred things" (1915). Max Weber believed religion could be a force for social change. Karl Marx viewed religion as a tool used by capitalist societies to perpetuate inequality. Religion is a social institution, because it includes beliefs and practices that serve the needs of society. Religion is also an example of a cultural universal, because it is found in all societies in one form or another. Functionalism, conflict theory, and interactionism all provide valuable ways for sociologists to understand religion.

SHORT ANSWER

1. List some ways that you see religion having social control in the everyday world.
2. What are some sacred items that you're familiar with? Are there some objects, such as cups, candles, or clothing, that would be considered profane in normal settings but are considered sacred in special circumstances or when used in specific ways?
3. Consider a religion that you are familiar with, and discuss some of its beliefs, behaviors, and norms. Discuss how these meet social needs. Then, research a religion that you don't know much about. Explain how its beliefs, behaviors, and norms are like/unlike the other religion.

GLOSSARY

religious experience

the conviction or sensation that one is connected to "the divine"

religious beliefs

specific ideas that members of a particular faith hold to be true

religious rituals

behaviors or practices that are either required for or expected of the members of a particular group

Further Research

For more discussion on the study of sociology and religion, check out this blog. The Immanent Frame is a forum for the exchange of ideas about religion, secularism, and society by leading thinkers in the social sciences and humanities.

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10.1.3: World Religions

Learning Objectives

By the end of this section, you will be able to:

1. Explain the differences between various types of religious organizations
2. Understand classifications of religion, like animism, polytheism, monotheism, and atheism
3. Describe several major world religions

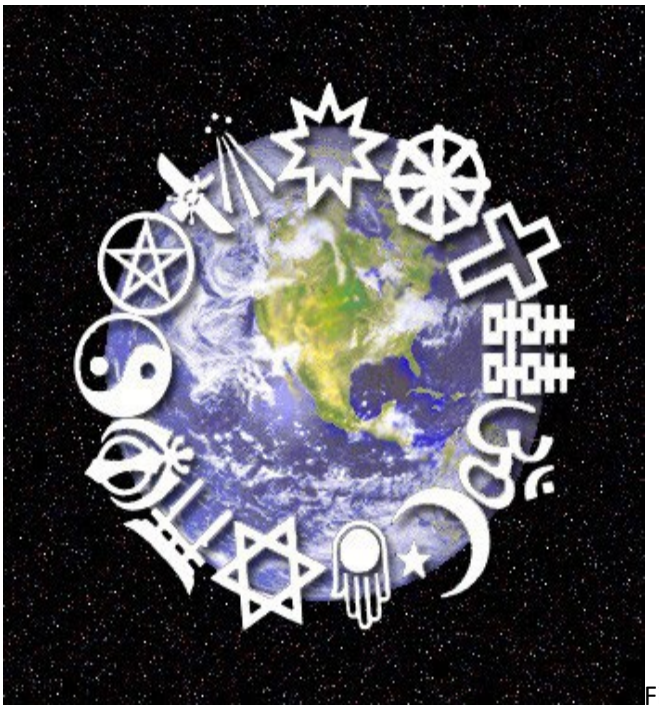


Figure 10.1.3.1: The symbols of fourteen religions are depicted here. In no particular order, they represent Judaism, Wicca, Taoism, Christianity, Confucianism, Baha'i, Druidism, Islam, Hinduism, Zoroastrianism, Shinto, Jainism, Sikhism, and Buddhism. Can you match the symbol to the religion? What might a symbolic interactionist make of these symbols? (Photo courtesy of ReligiousTolerance.org)

The major religions of the world (Hinduism, Buddhism, Islam, Confucianism, Christianity, Taoism, and Judaism) differ in many respects, including how each religion is organized and the belief system each upholds. Other differences include the nature of belief in a higher power, the history of how the world and the religion began, and the use of sacred texts and objects.

Types of Religious Organizations

Religions organize themselves—their institutions, practitioners, and structures—in a variety of fashions. For instance, when the Roman Catholic Church emerged, it borrowed many of its organizational principles from the ancient Roman military and turned senators into cardinals, for example. Sociologists use different terms, like ecclesia, denomination, and sect, to define these types of organizations. Scholars are also aware that these definitions are not static. Most religions

transition through different organizational phases. For example, Christianity began as a cult, transformed into a sect, and today exists as an ecclesia.

Cults, like sects, are new religious groups. In the United States today this term often carries pejorative connotations. However, almost all religions began as cults and gradually progressed to levels of greater size and organization. The term cult is sometimes used interchangeably with the term new religious movement (NRM). In its pejorative use, these groups are often disparaged as being secretive, highly controlling of members' lives, and dominated by a single, charismatic leader.

Controversy exists over whether some groups are cults, perhaps due in part to media sensationalism over groups like polygamous Mormons or the Peoples Temple followers who died at Jonestown, Guyana. Some groups that are controversially labeled as cults today include the Church of Scientology and the Hare Krishna movement.

A **sect** is a small and relatively new group. Most of the well-known Christian denominations in the United States today began as sects. For example, the Methodists and Baptists protested against their parent Anglican Church in England, just as Henry VIII protested against the Catholic Church by forming the Anglican Church. From "protest" comes the term Protestant.

Occasionally, a sect is a breakaway group that may be in tension with larger society. They sometimes claim to be returning to "the fundamentals" or to contest the veracity of a particular doctrine. When membership in a sect increases over time, it may grow into a denomination. Often a sect begins as an offshoot of a denomination, when a group of members believes they should separate from the larger group.

Some sects dissolve without growing into denominations. Sociologists call these **established sects**. Established sects, such as the Amish or Jehovah's Witnesses fall halfway between sect and denomination on the ecclesia–cult continuum because they have a mixture of sect-like and denomination-like characteristics.

A **denomination** is a large, mainstream religious organization, but it does not claim to be official or state-sponsored. It is one religion among many. For example, Baptist, African Methodist Episcopal, Catholic, and Seventh-day Adventist are all Christian denominations.

The term **ecclesia**, originally referring to a political assembly of citizens in ancient Athens, Greece, now refers to a congregation. In sociology, the term is used to refer to a religious group that most all members of a society belong to. It is considered a nationally recognized, or official, religion that holds a religious monopoly and is closely allied with state and secular powers. The United States does not have an ecclesia by this standard; in fact, this is the type of religious organization that many of the first colonists came to America to escape.

Figure 10.1.3.2: How might you classify the Mennonites? As a cult, a sect, or a denomination? (Photo courtesy of Frenkieb/flickr)

One way to remember these religious organizational terms is to think of cults, sects, denominations, and ecclesia representing a continuum, with increasing influence on society, where cults are least influential and ecclesia are most influential.

Types Of Religions

Scholars from a variety of disciplines have strived to classify religions. One widely accepted categorization that helps people understand different belief systems considers what or who people worship (if anything). Using this method of classification, religions might fall into one of these basic categories.

Religious Classification	What/Who Is Divine	Example
Polytheism	Multiple gods	Belief systems of the ancient Greeks and Romans
Monotheism	Single god	Judaism, Islam
Atheism	No deities	Atheism
Animism	Nonhuman beings (animals, plants, natural world)	Indigenous nature worship (Shinto)
Totemism	Human-natural being connection	Ojibwa (Native American) beliefs

One way scholars have categorized religions is by classifying what or who they hold to be divine.

Note that some religions may be practiced—or understood—in various categories. For instance, the Christian notion of the Holy Trinity (God, Jesus, Holy Spirit) defies the definition of **monotheism**, which is a religion based on belief in a single deity, to some scholars. Similarly, many Westerners view the multiple manifestations of Hinduism's godhead as **polytheistic**, which is a religion based on belief in multiple deities, while Hindus might describe those manifestations are a monotheistic parallel to the Christian Trinity. Some Japanese practice Shinto, which follows **animism**, which is a religion that believes in the divinity of nonhuman beings, like animals, plants, and objects of the natural world, while people who practice **totemism** believe in a divine connection between humans and other natural beings.

It is also important to note that every society also has nonbelievers, such as **atheists**, who do not believe in a divine being or entity, and agnostics, who hold that ultimate reality (such as God) is unknowable. While typically not an organized group, atheists and agnostics represent a significant portion of the population. It is important to recognize that being a nonbeliever in a divine entity does not mean the individual subscribes to no morality. Indeed, many Nobel Peace Prize winners and other great humanitarians over the centuries would have classified themselves as atheists or agnostics.

The World's Religions

Religions have emerged and developed across the world. Some have been short-lived, while others have persisted and grown. In this section, we will explore seven of the world's major religions.

Hinduism

Figure 10.1.3.3: Hindu women sometimes apply decorations of henna dye to their hands for special occasions such as weddings and religious festivals. (Photo courtesy of Akash Mazumdar)

The oldest religion in the world, Hinduism originated in the Indus River Valley about 4,500 years ago in what is now modern-day northwest India and Pakistan. It arose contemporaneously with ancient Egyptian and Mesopotamian cultures. With roughly one billion followers, Hinduism is the third-largest of the world's religions. Hindus believe in a divine power that can manifest as different entities. Three main incarnations—Brahma, Vishnu, and Shiva—are sometimes compared to the manifestations of the divine in the Christian Trinity.

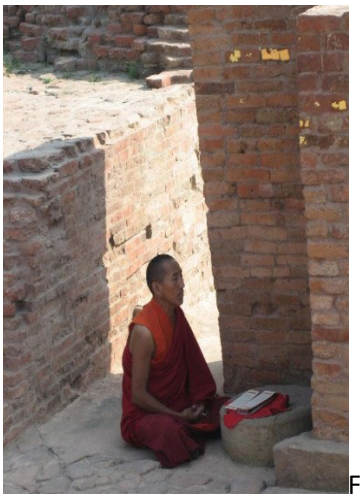
Multiple sacred texts, collectively called the Vedas, contain hymns and rituals from ancient India and are mostly written in Sanskrit. Hindus generally believe in a set of principles called dharma, which refer to one's duty in the world that corresponds with "right" actions. Hindus also believe in karma, or the notion that spiritual ramifications of one's actions are balanced cyclically in this life or a future life (reincarnation).

Figure 10.1.3.4: Buddhism promotes peace and tolerance. The 14th Dalai Lama (Tenzin Gyatso) is one of the most revered and influential Tibetan Buddhist leaders. (Photo courtesy of Nancy Pelosi/flickr)

Buddhism

Buddhism was founded by Siddhartha Gautama around 500 B.C.E. Siddhartha was said to have given up a comfortable, upper-class life to follow one of poverty and spiritual devotion. At the age of thirty-five, he famously meditated under a sacred fig tree and vowed not to rise before he achieved enlightenment (*bodhi*). After this experience, he became known as Buddha, or "enlightened one." Followers were drawn to Buddha's teachings and the practice of meditation, and he later established a monastic order.

Buddha's teachings encourage Buddhists to lead a moral life by accepting the four Noble Truths: 1) life is suffering, 2) suffering arises from attachment to desires, 3) suffering ceases when attachment to desires ceases, and 4) freedom from suffering is possible by following the "middle way." The concept of the "middle way" is central to Buddhist thinking, which encourages people to live in the present and to practice acceptance of others (Smith 1991). Buddhism also tends to deemphasize the role of a godhead, instead stressing the importance of personal responsibility (Craig 2002).

 Figure 10.1.3.5: Meditation is an important practice in Buddhism. A Tibetan monk is shown here engaged in solitary meditation. (Photo courtesy of Prince Roy/flickr)

Confucianism

Confucianism was the official religion of China from 200 B.C.E. until it was officially abolished when communist leadership discouraged religious practice in 1949. The religion was developed by Kung Fu-Tzu (Confucius), who lived in the sixth and fifth centuries B.C.E. An extraordinary teacher, his lessons—which were about self-discipline, respect for authority and tradition, and *jen* (the kind treatment of every person)—were collected in a book called the *Analects*.

Some religious scholars consider Confucianism more of a social system than a religion because it focuses on sharing wisdom about moral practices but doesn't involve any type of specific worship; nor does it have formal objects. In fact, its teachings were developed in context of problems of social anarchy and a near-complete deterioration of social cohesion. Dissatisfied with the social solutions put forth, Kung Fu-Tzu developed his own model of religious morality to help guide society (Smith 1991).

Taoism

In Taoism, the purpose of life is inner peace and harmony. Tao is usually translated as "way" or "path." The founder of the religion is generally recognized to be a man named Laozi, who lived sometime in the sixth century B.C.E. in China. Taoist beliefs emphasize the virtues of compassion and moderation.

The central concept of *tao* can be understood to describe a spiritual reality, the order of the universe, or the way of modern life in harmony with the former two. The ying-yang symbol and the concept of polar forces are central Taoist ideas (Smith 1991). Some scholars have compared this Chinese tradition to its Confucian counterpart by saying that "whereas Confucianism is concerned with day-to-day rules of conduct, Taoism is concerned with a more spiritual level of being" (Feng and English 1972).

Judaism

After their Exodus from Egypt in the thirteenth century B.C.E., Jews, a nomadic society, became monotheistic, worshipping only one God. The Jews' covenant, or promise of a special relationship with Yahweh (God), is an important element of Judaism, and their sacred text is the Torah, which Christians also follow as the first five books of the Bible. Talmud refers to a collection of sacred Jewish oral interpretation of the Torah. Jews emphasize moral behavior and action in this world as opposed to beliefs or personal salvation in the next world.

Figure 10.1.3.6: The Islamic house of worship is called a mosque. (Photo courtesy of David Stanley/flickr)

Islam

Islam is monotheistic religion and it follows the teaching of the prophet Muhammad, born in Mecca, Saudi Arabia, in 570 C.E. Muhammad is seen only as a prophet, not as a divine being, and he is believed to be the messenger of Allah (God), who is divine. The followers of Islam, whose U.S. population is projected to double in the next twenty years (Pew Research Forum 2011), are called Muslims.

Islam means "peace" and "submission." The sacred text for Muslims is the Qur'an (or Koran). As with Christianity's Old Testament, many of the Qur'an stories are shared with the Jewish faith. Divisions exist within Islam, but all Muslims are guided by five beliefs or practices, often called "pillars": 1) Allah is the only god, and Muhammad is his prophet, 2) daily prayer, 3) helping those in poverty, 4) fasting as a spiritual practice, and 5) pilgrimage to the holy center of Mecca.

Figure 10.1.3.7: One of the cornerstones of Muslim practice is journeying to the religion's most sacred place, Mecca. (Photo courtesy of Raeky/flickr)

Christianity

Today the largest religion in the world, Christianity began 2,000 years ago in Palestine, with Jesus of Nazareth, a charismatic leader who taught his followers about *caritas* (charity) or treating others as you would like to be treated yourself.

The sacred text for Christians is the Bible. While Jews, Christians, and Muslims share many of same historical religious stories, their beliefs verge. In their shared sacred stories, it is suggested that the son of God—a messiah—will return to save God's followers. While Christians believe that he already appeared in the person of Jesus Christ, Jews and Muslims disagree. While they recognize Christ as an important historical figure, their traditions don't believe he's the son of God, and their faiths see the prophecy of the messiah's arrival as not yet fulfilled.

Different Christian groups have variations among their sacred texts. For instance, Mormons, an established Christian sect, also use the Book of Mormon, which they believe details other parts of Christian doctrine and Jesus' life that aren't included in the Bible. Similarly, the Catholic Bible includes the Apocrypha, a collection that, while part of the 1611 King James translation, is no longer included in Protestant versions of the Bible. Although monotheistic, Christians often describe their god through three manifestations that they call the Holy Trinity: the father (God), the son (Jesus), and the Holy Spirit. The Holy Spirit is a term Christians often use to describe religious experience, or how they feel the presence of the sacred in their lives. One foundation of Christian doctrine is the Ten Commandments, which decry acts considered sinful, including theft, murder, and adultery.

SUMMARY

Sociological terms for different kinds of religious organizations are, in order of decreasing influence in society, ecclesia, denomination, sect, and cult. Religions can be categorized according to what or whom its followers worship. Some of the major, and oldest, of the world's religions include Hinduism, Buddhism, Confucianism, Taoism, Judaism, Islam, and Christianity.

SHORT ANSWER

1. Consider the different types of religious organizations in the United States. What role did ecclesia play in the history of the United States? How have sects tended to change over time? What role do cults have today?
2. What is your understanding of monotheism versus polytheism? How might your ideology be an obstacle to understanding the theism of another religion you're unfamiliar with?
3. In U.S. society, do you believe there is social stratification that correlates with religious beliefs? What about within the practitioners of a given religion? Provide examples to illustrate your point.

GLOSSARY

animism
: the religion that believes in the divinity of nonhuman beings, like animals, plants, and objects of the natural world

atheism
: the belief in no deities

cults
: religious groups that are small, secretive, and highly controlling of members and have a charismatic leader

denomination
: a large, mainstream religion that is not sponsored by the state

ecclesia
: a religion that is considered the state religion

established sects
: sects that last but do not become denominations

monotheism
: a religion based on belief in a single deity

polytheism
: a religion based on belief in multiple deities

sect
: a small, new offshoot of a denomination

totemism
: the belief in a divine connection between humans and other natural beings

Further Research

PBS's *Frontline* explores "the life of Jesus and the rise of Christianity" in this in-depth documentary. View the piece in its entirety here: http://openstaxcollege.org/l/PBS_Frontline. (From Jesus To Christ - The First Christians | FRONTLINE | PBS)

For more insight on Confucianism, read the Analects by Confucius, at http://openstaxcollege.org/l/Confucius_Analects. For a primer on Judaism, read Judaism 101 at http://openstaxcollege.org/l/Jew_FAQ.

Sorting through the different Christian denominations can be a daunting task. To help clarify these groups, go to http://openstaxcollege.org/l/Christian_denominations.

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10.1.4: Religion in the United States

Learning Objectives

By the end of this section, you will be able to:

1. Give examples of religion as an agent of social change
2. Describe current U.S. trends including megachurches and secularization

In examining the state of religion in the United States today, we see the complexity of religious life in our society, plus emerging trends like the rise of the megachurch, secularization, and the role of religion in social change.

Religion and Social Change

Religion has historically been an impetus to social change. The translation of sacred texts into everyday, non-scholarly language empowered people to shape their religions. Disagreements between religious groups and instances of religious persecution have led to wars and genocides. The United States is no stranger to religion as an agent of social change. In fact, the United States' first European arrivals were acting largely on religious convictions when they were compelled to settle in the United States.

Liberation Theology

Liberation theology began as a movement within the Roman Catholic Church in the 1950s and 1960s in Latin America, and it combines Christian principles with political activism. It uses the church to promote social change via the political arena, and it is most often seen in attempts to reduce or eliminate social injustice, discrimination, and poverty. A list of proponents of this kind of social justice (although some pre-date liberation theory) could include Francis of Assisi, Leo Tolstoy, Martin Luther King Jr., and Desmond Tutu.

Although begun as a moral reaction against the poverty caused by social injustice in that part of the world, today liberation theology is an international movement that encompasses many churches and denominations. Liberation theologians discuss theology from the point of view of the poor and the oppressed, and some interpret the scriptures as a call to action against poverty and injustice. In Europe and North America, feminist theology has emerged from liberation theology as a movement to bring social justice to women.

RELIGIOUS LEADERS AND THE RAINBOW OF GAY PRIDE

What happens when a religious leader officiates a gay marriage against denomination policies? What about when that same minister defends the action in part by coming out and making her own lesbian relationship known to the church?

In the case of the Reverend Amy DeLong, it meant a church trial. Some leaders in her denomination assert that homosexuality is incompatible with their faith, while others feel this type of discrimination has no place in a modern church (Barrick 2011).

As the LBGT community increasingly advocates for, and earns, basic civil rights, how will religious communities respond? Many religious groups have traditionally discounted LBGT sexualities as "wrong." However, these organizations have moved closer to respecting human rights by, for example, increasingly recognizing females as an equal gender. The Roman Catholic Church drew controversial attention to this issue in 2010 when the Vatican secretary of state suggested homosexuality was in part to blame for pedophilic sexual abuse scandals that have plagued the church (Beck 2010). Because numerous studies have shown there to be no relationship between homosexuality and pedophilia, nor a higher incidence of pedophilia among homosexuals than among heterosexuals (Beck 2010), the Vatican's comments seem suspect. More recently Pope Francis has been pushing for a more open church, and some Catholic bishops have been advocating for a more "gay-friendly" church (McKenna, 2014). This has not come to pass, but some scholars believe these changes are a matter of time.

No matter the situation, most religions have a tenuous (at best) relationship with practitioners and leaders in the gay community. As one of the earliest Christian denominations to break barriers by ordaining women to serve as pastors, will Amy DeLong's United Methodist denomination also be a leader in LBGT rights within Christian churchgoing society?

Megachurches

A **megachurch** is a Christian church that has a very large congregation averaging more than 2,000 people who attend regular weekly services. As of 2009, the largest megachurch in the United States was in Houston Texas, boasting an average weekly attendance of more than 43,000 (Bogan 2009). Megachurches exist in other parts of the world, especially in South Korea, Brazil, and several African countries, but the rise of the megachurch in the United States is a fairly recent phenomenon that has developed primarily in California, Florida, Georgia, and Texas.

Since 1970 the number of megachurches in this country has grown from about fifty to more than 1,000, most of which are attached to the Southern Baptist denomination (Bogan 2009). Approximately six million people are members of these churches (Bird and Thumma 2011). The architecture of these church buildings often resembles a sport or concert arena. The church may include jumbotrons (large-screen televisual technology usually used in sports arenas to show close-up shots of an event). Worship services feature contemporary music with drums and electric guitars and use state-of-the-art sound equipment. The buildings sometimes include food courts, sports and recreation facilities, and bookstores. Services such as child care and mental health counseling are often offered.

Typically, a single, highly charismatic pastor leads the megachurch; at present, all are male. Some megachurches and their preachers have a huge television presence, and viewers all around the country watch and respond to their shows and fundraising.

Besides size, U.S. megachurches share other traits, including conservative theology, evangelism, use of technology and social networking (Facebook, Twitter, podcasts, blogs), hugely charismatic leaders, few financial struggles, multiple sites, and predominantly white membership. They list their main focuses as youth activities, community service, and study of the Scripture (Hartford Institute for Religion Research b).

Critics of megachurches believe they are too large to promote close relationships among fellow church members or the pastor, as could occur in smaller houses of worship. Supporters note that, in addition to the large worship services, congregations generally meet in small groups, and some megachurches have informal events throughout the week to allow for community-building (Hartford Institute for Religion Research a).

Secularization

Historical sociologists Émile Durkheim, Max Weber, and Karl Marx and psychoanalyst Sigmund Freud anticipated secularization and claimed that the modernization of society would bring about a decrease in the influence of religion. Weber believed membership in distinguished clubs would outpace membership in Protestant sects as a way for people to gain authority or respect.

Conversely, some people suggest secularization is a root cause of many social problems, such as divorce, drug use, and educational downturn. One-time presidential contender Michele Bachmann even linked Hurricane Irene and the 2011 earthquake felt in Washington D.C. to politicians' failure to listen to God (Ward 2011).

While some scholars see the United States becoming increasingly secular, others observe a rise in fundamentalism. Compared to other democratic, industrialized countries, the United States is generally perceived to be a fairly religious nation. Whereas 65 percent of U.S. adults in a 2009 Gallup survey said religion was an important part of their daily lives, the numbers were lower in Spain (49 percent), Canada (42 percent), France (30 percent), the United Kingdom (27 percent), and Sweden (17 percent) (Crabtree and Pelham 2009). Secularization interests social observers because it entails a pattern of change in a fundamental social institution.

THANK GOD FOR THAT TOUCHDOWN: SEPARATION OF CHURCH AND STATE

Imagine three public universities with football games scheduled on Saturday. At University A, a group of students in the stands who share the same faith decide to form a circle amid the spectators to pray for the team. For fifteen minutes, people in the circle share their prayers aloud among their group. At University B, the team ahead at halftime decides to join together in prayer, giving thanks and seeking support from God. This lasts for the first ten minutes of halftime on the sidelines of the field while spectators watch. At University C, the game program includes, among its opening moments, two minutes set aside for the team captain to share a prayer of his choosing with the spectators.

In the tricky area of separation of church and state, which of these actions is allowed and which is forbidden? In our three fictional scenarios, the last example is against the law while the first two situations are perfectly acceptable.

In the United States, a nation founded on the principles of religious freedom (many settlers were escaping religious persecution in Europe), how stringently do we adhere to this ideal? How well do we respect people's right to practice any belief system of their choosing? The answer just might depend on what religion you practice.

In 2003, for example, a lawsuit escalated in Alabama regarding a monument to the Ten Commandments in a public building. In response, a poll was conducted by *USA Today*, CNN, and Gallup. Among the findings: 70 percent of people approved of a Christian Ten Commandments monument in public, while only 33 percent approved of a monument to the Islamic Qur'an in the same space. Similarly, survey respondents showed a 64 percent approval of social programs run by Christian organizations, but only 41 percent approved of the same programs run by Muslim groups (Newport 2003).

These statistics suggest that, for most people in the United States, freedom of religion is less important than the religion under discussion. And this is precisely the point made by those who argue for separation of church and state. According to their contention, any state-sanctioned recognition of religion suggests endorsement of one belief system at the expense of all others—contradictory to the idea of freedom of religion.

So what violates separation of church and state and what is acceptable? Myriad lawsuits continue to test the answer. In the case of the three fictional examples above, the issue of spontaneity is key, as is the existence (or lack thereof) of planning on the part of event organizers.

The next time you're at a state event—political, public school, community—and the topic of religion comes up, consider where it falls in this debate.

SUMMARY

Liberation theology combines Christian principles with political activism to address social injustice, discrimination, and poverty. Megachurches are those with a membership of more than 2,000 regular attendees, and they are a vibrant, growing, and highly influential segment of U.S. religious life. Some sociologists believe levels of religiosity in the United States are declining (called secularization), while others observe a rise in fundamentalism.

SHORT ANSWER

1. Do you believe the United States is becoming more secularized or more fundamentalist? Comparing your generation to that of your parents or grandparents, what differences do you see in the relationship between religion and society? What would popular media have you believe is the state of religion in the United States today?

GLOSSARY

liberation theology

the use of a church to promote social change via the political arena

megachurch

a Christian church that has a very large congregation averaging more than 2,000 people who attend regular weekly services

Further Research

What is a megachurch and how are they changing the face of religion? Read “Exploring the Megachurch Phenomena: Their Characteristics and Cultural Context” at http://openstaxcollege.org/l/megachurch.

Curious about the LGBT religious movement? Visit the Gay and Lesbian Alliance Against Defamation (GLAAD) and Human Rights Campaign (HRC) websites for current news about the growing inclusion of LGBT citizens into their respective religious communities, both in the pews and from the pulpit: http://openstaxcollege.org/l/GLAAD and http://openstaxcollege.org/l/human_rights_campaign.

How do Christians feel about gay marriage? How many Mormons are there in the United States? Check out http://openstaxcollege.org/l/Pew_Forum, the Pew Forum on Religion and Public Life, a research institute examining U.S. religious trends.

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10.2: Case Study: Frito-Lay Settles EEOC Religious Discrimination Lawsuit

Agreement Requires PepsiCo Regional Staff—Not Local Managers—to Review All Reasonable Accommodations Requests in Florida

WEST PALM BEACH, Fla. – Frito-Lay, Inc., a Plano, Texas-based subsidiary of PepsiCo that manufactures and distributes snack foods, has agreed to pay $50,000 to settle a religious discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to EEOC's lawsuit, Frito-Lay violated federal law when it fired a newly promoted route sales representative in the West Palm Beach area because he could not train for the position on Saturdays due to his religious beliefs. The employee completed approximately five weeks of training without having to train on Saturdays. However, despite learning he could not work on Saturdays because of his Seventh-day Adventist religious beliefs, Frito-Lay scheduled him to train on Saturdays and terminated him after he failed to report to training on two consecutive Saturdays.

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on religion and requires employers to reasonably accommodate an applicant's or employee's sincerely-held religious beliefs unless it would pose an undue hardship. The EEOC filed its lawsuit in U.S. District Court for the Southern District of Florida, West Palm Beach Division (EEOC v. Frito-Lay, Inc., Civil Action No. 9:20-cv-81689), after first attempting to reach a pre-litigation settlement through its conciliation process.

The three-year consent decree resolving the EEOC's lawsuit has been approved by the federal court. In addition to paying $50,000 in monetary relief, Frito-Lay will provide specialized training on reasonable accommodation processes to human resources personnel, managers, and employees; require all accommodation requests to be reviewed and decided by PepsiCo regional staff with specialized knowledge of Title VII; and report requests to accommodate an employee's or prospective employee's religious observance or practice and the resolution of these requests to EEOC.

"We commend Frito-Lay for working collaboratively with EEOC to resolve this lawsuit," said EEOC Regional Attorney Robert Weisberg. "The company's eagerness to confer with EEOC about the agency's concerns from the lawsuit's inception and its agreement to provide enhanced training about reasonable accommodation requests will benefit its workers and the company."

Bradley A. Anderson, acting district director for the Miami District Office, added, "The failure to accommodate religious practices remains a persistent problem in the workplace. Frito-Lay has demonstrated its commitment to the Civil Rights Act by taking strong, affirmative measures and making real changes to its religious accommodation process to ensure equal opportunity for people of all religious backgrounds."

EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. The Miami District Office's jurisdiction includes Florida, Puerto Rico, and U.S. Virgin Islands. Further information is available at www.eeoc.gov.

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10.3: Case Study: Wellpath Sued by EEOC For Religious Discrimination

Health Care Company Denied Religious Accommodation for a Correctional Nurse To Wear a Scrub Skirt, Federal Agency Charges

SAN ANTONIO, Texas — Tennessee-based Wellpath, LLC, a provider of health services in correctional facilities, violated federal law when it refused to accommodate the religious beliefs of a nurse, the U.S. Equal Employment Opportunity Commission (EEOC) charged in a lawsuit it filed today.

According to the EEOC's lawsuit, a nurse who is a practicing Apostolic Pentecostal Christian was hired by Wellpath to work in the GEO Central Texas Correctional Facility in downtown San Antonio. Before reporting to work, the nurse told a Wellpath human resources employee that her religious beliefs require her to dress modestly and to wear a scrub skirt instead of scrub pants while at work. In response, Wellpath denied the request for her religion-based accommodation and rescinded the nurse's job offer. According to the suit, the nurse had worn a scrub skirt in other nursing jobs, including at a juvenile correctional facility.

Title VII of the Civil Rights Act of 1964 prohibits discrimination based on religion and requires employers to reasonably accommodate an applicant's or employee's sincerely held religious beliefs unless it would pose an undue hardship. The EEOC filed suit, Civil Action No. 5:20-cv-1092, in U.S. District Court for the Western District of Texas, San Antonio Division, after first attempting to reach a pre-litigation settlement through its conciliation process. In this case, the EEOC seeks back pay, compensatory and punitive damages and injunctive relief, including an order barring Wellpath from engaging in discriminatory treatment in the future.

"This nurse has treated patients and performed her job successfully while wearing a scrub skirt before," said Philip Moss, a trial attorney in the EEOC's San Antonio Field Office. "The EEOC is fully committed to enforcing laws that protect employees in the workplace from discrimination on the basis of religion."

Eduardo Juarez, a supervisory trial attorney in the EEOC's San Antonio Field Office, added, "Employers are required to reasonably adjust their dress codes to accommodate the religious beliefs of applicants or employees, unless these actions would constitute an undue hardship."

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

10.3: Case Study: Wellpath Sued by EEOC For Religious Discrimination is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

10.4: Case Study: UPS to Pay $4.9 Million to Settle EEOC Religious Discrimination Suit

Package Delivery Giant Discriminated Against Class of Applicants and Employees Whose Religion Conflicted with the Company's Uniform and Appearance Policy, Federal Agency Charged

NEW YORK - United Parcel Service, Inc., the world's largest package delivery company, will pay $4.9 million and provide other relief to settle a class religious discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC). The suit was resolved by a five-year consent decree entered by Judge Margo K. Brodie on December 21, 2018, on the eve of the government shutdown. The EEOC reopened today.

UPS prohibits male employees in supervisory or customer contact positions, including delivery drivers, from wearing beards or growing their hair below collar length. The EEOC alleged that since at least January 1, 2005, UPS failed to hire or promote individuals whose religious practices conflict with its appearance policy and failed to provide religious accommodations to its appearance policy at facilities throughout the United States. The EEOC further alleged that UPS segregated employees who maintained beards or long hair in accordance with their religious beliefs into non-supervisory, back-of-the-facility positions without customer contact.

All this alleged conduct violates Title VII of the Civil Rights Act of 1964, which prohibits employers from discriminating against individuals because of their religion and requires employers to reasonably accommodate an employee's religious beliefs unless doing so would impose an undue hardship on the employer. EEOC filed its lawsuit (*EEOC v. United Parcel Service, Inc.*, Civil Action No. 1:15-cv-04141) on July 15, 2015 in the U.S. District Court for the Eastern District of New York after first attempting to reach a pre-litigation settlement through its conciliation process.

"For far too long, applicants and employees at UPS have been forced to choose between violating their religious beliefs and advancing their careers at UPS," said Jeffrey Burstein, regional attorney for the EEOC's New York District Office. "The EEOC filed this suit to end that longstanding practice at UPS, and we are extremely pleased with the result."

Under the terms of the decree, UPS will pay $4.9 million to a class of current and former applicants and employees identified by the EEOC. In addition to the monetary relief, UPS will amend its religious accommodation process for applicants and employees, provide nationwide training to managers, supervisors, and human resources personnel, and publicize the availability of religious accommodations on its internal and external websites. UPS also agreed to provide the EEOC with periodic reports of requests for religious accommodation related to the appearance policy to enable the EEOC to monitor the effectiveness of the decree's provisions.

Kevin Berry, director of the EEOC's New York District Office, said, "Federal law requires employers to make exceptions to their appearance policies to allow applicants and employees to observe religious dress and grooming practices."

Elizabeth Fox-Solomon, the EEOC's lead trial attorney for the case, said, "UPS's strict appearance policy has operated to exclude Muslims, Sikhs, Rastafarians, and other religious groups from equal participation and advancement in the workforce for many years. We appreciate UPS's willingness to make real changes to its religious accommodation process to ensure equal opportunity for people of all backgrounds."

Individuals who believe they may have been denied a position at UPS or otherwise discriminated against by UPS because of a religious conflict with the appearance policy should contact the EEOC toll-free at 1-833-727-6581, or by e-mail at ups-religion.lawsuit@eeoc.gov.

The EEOC's New York District Office is responsible for processing discrimination charges, administrative enforcement, and the conduct of agency litigation in Connecticut, Maine, Massachusetts, New Hampshire, New York, northern New Jersey, Rhode Island, and Vermont. The Buffalo Local Office conducted the investigation resulting in this lawsuit.

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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11.1: Managing Demographic Diversity

Learning Objectives

1. Explain the benefits of managing diversity effectively.
2. Explain the challenges of diversity management.
3. Describe the unique environment facing employees with specific traits such as gender, race, religion, physical disabilities, age, and sexual orientation.

Diversity refers to the ways in which people are similar or different from each other. It may be defined by any characteristic that varies within a particular work unit such as gender, race, age, education, tenure, or functional background (such as being an engineer versus being an accountant). Even though diversity may occur with respect to any characteristic, our focus will be on diversity with respect to demographic, relatively stable, and visible characteristics: specifically gender, race, age, religion, physical abilities, and sexual orientation. Understanding how these characteristics shape organizational behavior is important. While many organizations publicly rave about the benefits of diversity, many find it challenging to manage diversity effectively. This is evidenced by the number of complaints filed with the Equal Employment Opportunity Commission (EEOC) regarding discrimination. In the United States, the Age Discrimination Act of 1975 and Title VII of the Civil Rights Act of 1964 outlaw discrimination based on age, gender, race, national origin, or religion. The 1990 Americans with Disabilities Act prohibits discrimination of otherwise capable employees based on physical or mental disabilities. In 2008, over 95,000 individuals filed a complaint claiming that they were discriminated based on these protected characteristics. Of course, this number represents only the most extreme instances in which victims must have received visibly discriminatory treatment to justify filing a complaint. It is reasonable to assume that many instances of discrimination go unreported because they are more subtle and employees may not even be aware of inconsistencies such as pay discrimination. Before the passing of anti-discrimination laws in the United States, many forms of discrimination were socially acceptable. This acceptance of certain discrimination practices is more likely to be seen in countries without similar employment laws. It seems that there is room for improvement when it comes to benefiting from diversity, understanding its pitfalls, and creating a work environment where people feel appreciated for their contributions regardless of who they are.

Benefits of Diversity

What is the business case for diversity? Having a diverse workforce and managing it effectively have the potential to bring about a number of benefits to organizations.

Higher Creativity in Decision-making

An important potential benefit of having a diverse workforce is the ability to make higher-quality decisions. In a diverse work team, people will have different opinions and perspectives. In these teams, individuals are more likely to consider more alternatives and think outside the box when making decisions. When thinking about a problem, team members may identify novel solutions. Research shows that diverse teams tend to make higher-quality decisions.McLeod, P., Lobel, S., & Cox, T. H. (1996). Ethnic diversity and creativity in small groups. *Small Group Research*, *27*,

248–264. Therefore, having a diverse workforce may have a direct impact on a company's bottom line by increasing creativity in decision-making.

Better Understanding and Service of Customers

A company with a diverse workforce may create products or services that appeal to a broader customer base. For example, PepsiCo Inc. planned and executed a successful diversification effort in the recent past. The company was able to increase the percentage of women and ethnic minorities in many levels of the company, including management. The company points out that in 2004, about 1% of the company's 8% revenue growth came from products that were inspired by the diversity efforts, such as guacamole-flavored Doritos chips and wasabi-flavored snacks. Similarly, Harley-Davidson Motor Company is pursuing diversification of employees at all levels because the company realizes that they need to reach beyond their traditional customer group to stay competitive. Hymowitz, C. (2005, November 14). The new diversity: In a global economy, it's no longer about how many employees you have in this group and that group; It's a lot more complicated—and if you do it right, a lot more effective. *Wall Street Journal*, p. R1. Wal-Mart Stores Inc. heavily advertises in Hispanic neighborhoods between Christmas and The Epiphany because the company understands that Hispanics tend to exchange gifts on that day as well.Slater, S. F., Weigand, R. A., & Zwirlein, T. J. (2008). The business case for commitment to diversity. *Business Horizons*, *51*, 201–209. A company with a diverse workforce may understand the needs of particular groups of customers better, and customers may feel more at ease when they are dealing with a company that understands their needs.

More Satisfied Workforce

When employees feel that they are fairly treated, they tend to be more satisfied. On the other hand, when employees perceive that they are being discriminated against, they tend to be less attached to the company, less satisfied with their jobs, and experience more stress at work. Sanchez, J. I., & Brock, P. (1996). Outcomes of perceived discrimination among Hispanic employees: Is diversity management a luxury or necessity? *Academy of Management Journal*, *39*, 704–719. Organizations where employees are satisfied often have lower turnover.

Higher Stock Prices

Companies that do a better job of managing a diverse workforce are often rewarded in the stock market, indicating that investors use this information to judge how well a company is being managed. For example, companies that receive an award from the U.S. Department of Labor for their diversity management programs show increases in the stock price in the days following the announcement. Conversely, companies that announce settlements for discrimination lawsuits often show a decline in stock prices afterward. Wright, P., Ferris, S. P., Hiller, J. S., & Kroll, M. (1995). Competitiveness through management of diversity: Effects on stock price valuation. *Academy of Management Journal*, *30*, 272–287.

Lower Litigation Expenses

Companies doing a particularly bad job in diversity management face costly litigations. When an employee or a group of employees feel that the company is violating EEOC laws, they may file a complaint. The EEOC acts as a mediator between the company and the person, and the company may choose to settle the case outside the court. If no settlement is reached, the EEOC may sue the company on behalf of the complainant or may provide the injured party with a right-to-sue letter. Regardless of the outcome, these lawsuits are expensive and include attorney fees as well as the cost of the settlement or judgment, which may reach millions of dollars. The resulting poor publicity also has a cost to the company. For example, in 1999, the Coca-Cola Company faced a race discrimination lawsuit claiming that the company discriminated against African Americans in promotions. The company settled for a record $192.5 million. Lovel, J. (2003, May 2). Race discrimination suit targets Coke bottler CCE. *Atlanta Business Chronicle*. Retrieved January 29, 2009, from http://atlanta.bizjournals.com/atlanta/stories/2003/05/05/story1.html. In 2004, the clothing retailer Abercrombie & Fitch faced a race discrimination lawsuit that led to a $40 million settlement and over $7 million in legal fees. The company had constructed a primarily Caucasian image and was accused of discriminating against Hispanic and African American job candidates, steering these applicants to jobs in the back of the store. As part of the settlement, the company agreed to diversify its workforce and catalog, change its image to promote diversity, and stop recruiting employees primarily from college fraternities and sororities. Greenhouse, S. (2004, November 17). Abercrombie & Fitch bias case is settled. *New York Times*. Retrieved January 29, 2009, from http://www.nytimes.com/2004/11/17/national/17settle.html. In 2007, the new African American district attorney of New Orleans, Eddie Jordan, was accused of firing 35 Caucasian employees and replacing them with African American employees. In the resulting reverse-discrimination lawsuit, the office was found liable for $3.7 million, leading Jordan to step down from his office in the hopes of preventing the assets of the office from being seized. After $3.7 million reverse discrimination lawsuit, the New Orleans district attorney resigns. (2007, October 31). *DiversityInc Magazine*. Retrieved November 18, 2008, from http://www.diversityinc.com/public/2668.cfm. As you can see, effective management of diversity can lead to big cost savings by decreasing the probability of facing costly and embarrassing lawsuits.

Higher Company Performance

As a result of all these potential benefits, companies that manage diversity more effectively tend to outperform others. Research shows that in companies pursuing a growth strategy, there was a positive relationship between racial diversity of the company and firm performance. Richard, O. C. (2000). Racial diversity, business strategy, and firm performance: A resource-based view. *Academy of Management Journal*, *43*, 164–177. Companies ranked in the Diversity 50 list created by *DiversityInc* magazine performed better than their counterparts.Slater, S. F., Weigand, R. A., & Zwirlein, T. J. (2008). The business case for commitment to diversity. *Business Horizons*, *51*, 201–209. And, in a survey of 500 large companies, those with the largest percentage of female executives performed better than those with the smallest percentage of female executives. Weisul, K. (2004, January 28). The bottom line on women at the top. *Business Week Online*. Retrieved November 14, 2008, from http://www.businessweek.com/.

Challenges of Diversity

If managing diversity effectively has the potential to increase company performance, increase creativity, and create a more satisfied workforce, why aren't all companies doing a better job of encouraging diversity? Despite all the potential advantages, there are also a number of challenges associated with increased levels of diversity in the workforce.

Similarity-Attraction Phenomenon

One of the commonly observed phenomena in human interactions is the tendency for individuals to be attracted to similar individuals.Riordan, C. M., & Shore, L. M. (1997). Demographic diversity and employee attitudes: An empirical examination of relational demography within work units. *Journal of Applied Psychology*, *82*, 342–358. Research shows that individuals communicate less frequently with those who are perceived as different from themselves.Chatman, J. A., Polzer, J. T., Barsade, S. G., & Neale, M. A. (1998). Being different yet feeling similar: The influence of demographic composition and organizational culture on work processes and outcomes. *Administrative Science Quarterly*, *43*, 749–780. They are also more likely to experience emotional conflict with people who differ with respect to race, age, and gender. Jehn, K. A., Northcraft, G. B., & Neale, M. A. (1999). Why differences make a difference: A field study of diversity, conflict, and performance in workgroups. *Administrative Science Quarterly*, *44*, 741–763; Pelled, L. H., Eisenhardt, K. M., & Xin, K. R. (1999). Exploring the black box: An analysis of workgroup diversity, conflict, and performance. *Administrative Science Quarterly*, *44*, 1–28. Individuals who are different from their team members are more likely to report perceptions of unfairness and feel that their contributions are ignored. Price, K. H., Harrison, D. A., & Gavin, J. H. (2006). Withholding inputs in team contexts: Member composition, interaction processes, evaluation structure, and social loafing. *Journal of Applied Psychology*, *91*, 1375–1384.

The similarity-attraction phenomenon may explain some of the potentially unfair treatment based on demographic traits. If a hiring manager chooses someone who is racially similar over a more qualified candidate from a different race, the decision will be ineffective and unfair. In other words, similarity-attraction may prevent some highly qualified women, minorities, or persons with disabilities from being hired. Of course, the same tendency may prevent highly qualified Caucasian and male candidates from being hired as well, but given that Caucasian males are more likely to hold powerful management positions in today's U.S.-based organizations, similarity-attraction may affect women and minorities to a greater extent. Even when candidates from minority or underrepresented groups are hired, they may receive different treatment within the organization. For example, research shows that one way in which employees may get ahead within organizations is through being mentored by a knowledgeable and powerful mentor. Yet, when the company does not have a formal mentoring program in which people are assigned a specific mentor, people are more likely to develop a mentoring relationship with someone who is similar to them in demographic traits. Dreher, G. F., & Cox, T. H. (1996). Race, gender and opportunity: A study of compensation attainment and the establishment of mentoring relationships. *Journal of Applied Psychology*, *81*, 297–308. This means that those who are not selected as protégés will not be able to benefit from the support and advice that would further their careers. Similarity-attraction may even affect the treatment people receive daily. If the

company CEO constantly invites a male employee to play golf with him while a female employee never receives the invitation, the male employee may have a serious advantage when important decisions are made.

Why are we more attracted to those who share our demographic attributes? Demographic traits are part of what makes up surface-level diversity. Surface-level diversity includes traits that are highly visible to us and those around us, such as race, gender, and age. Researchers believe that people pay attention to surface diversity because they are assumed to be related to deep-level diversity, which includes values, beliefs, and attitudes. We want to interact with those who share our values and attitudes, but when we meet people for the first time, we have no way of knowing whether they share similar values. As a result, we tend to use surface-level diversity to make judgments about deep-level diversity. Research shows that surface-level traits affect our interactions with other people early in our acquaintance with them, but as we get to know people, the influence of surface-level traits is replaced by deep-level traits such as similarity in values and attitudes. Harrison, D. A., Price, K. H., Gavin, J. H., & Florey, A. T. (2002). Time, teams, and task performance: Changing effects of surface- and deep-level diversity on group functioning. *Academy of Management Journal*, *45*, 1029–1045. Age, race, and gender dissimilarity are also stronger predictors of employee turnover during the first few weeks or months within a company. It seems that people who are different from others may feel isolated during their early tenure when they are dissimilar to the rest of the team, but these effects tend to disappear as people stay longer and get to know other employees.

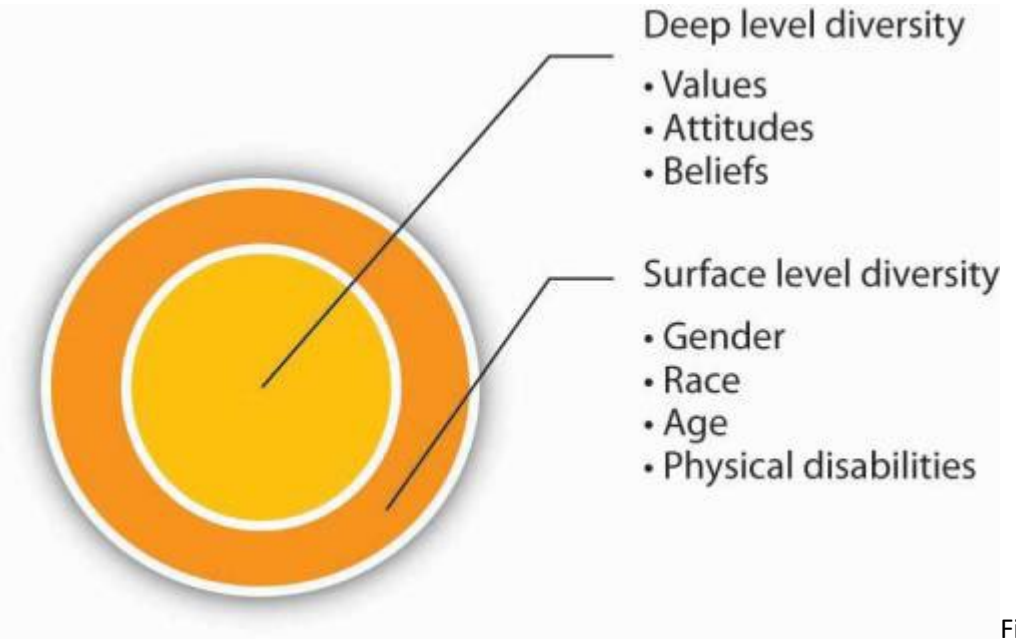

Figure 11.1.1: Individuals often initially judge others based on surface-level diversity. Over time, this effect tends to fade and is replaced by deep-level traits such as similarity in values and attitudes.

As you may see, while similarity-attraction may put some employees at a disadvantage, it is a tendency that can be managed by organizations. By paying attention to employees early in their tenure, having formal mentoring programs in which people are assigned mentors, and training

managers to be aware of the similarity-attraction tendency, organizations can go a long way in dealing with potential diversity challenges.

Faultlines

A faultline is an attribute along which a group is split into subgroups. For example, in a group with three female and three male members, gender may act as a faultline because the female members may see themselves as separate from the male members. Now imagine that the female members of the same team are all over 50 years old and the male members are all younger than 25. In this case, age and gender combine to further divide the group into two subgroups. Teams that are divided by faultlines experience a number of difficulties. For example, members of the different subgroups may avoid communicating with each other, reducing the overall cohesiveness of the team. Research shows that these types of teams make less effective decisions and are less creative. Pearsall, M. J., Ellis, A. P. J., & Evans, J. M. (2008). Unlocking the effects of gender faultlines on team creativity: Is activation the key? *Journal of Applied Psychology*, *93*, 225–234; Sawyer, J. E., Houlette, M. A., & Yeagley, E. L. (2006). Decision performance and diversity structure: Comparing faultlines in convergent, crosscut, and racially homogeneous groups. *Organizational Behavior and Human Decision Processes*, *99*, 1–15. Faultlines are more likely to emerge in diverse teams, but not all diverse teams have faultlines. Going back to our example, if the team has three male and three female members, but if two of the female members are older and one of the male members is also older, then the composition of the team will have much different effects on the team's processes. In this case, age could be a bridging characteristic that brings together people divided across gender.

Research shows that even groups that have strong faultlines can perform well if they establish certain norms. When members of subgroups debate the decision topic among themselves before having a general group discussion, there seems to be less communication during the meeting on pros and cons of different alternatives. Having a norm stating that members should not discuss the issue under consideration before the actual meeting may be useful in increasing decision effectiveness. Sawyer, J. E., Houlette, M. A., & Yeagley, E. L. (2006). Decision performance and diversity structure: Comparing faultlines in convergent, crosscut, and racially homogeneous groups. *Organizational Behavior and Human Decision Processes*, *99*, 1–15.

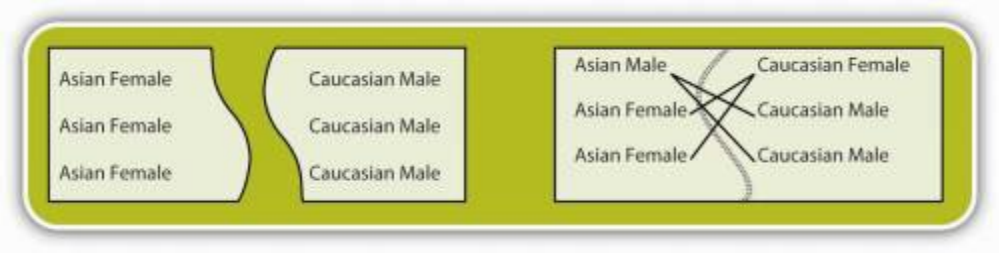

Figure 11.1.2: The group on the left will likely suffer a strong faultline due to the lack of common ground. The group to the right will likely only suffer a weak faultline because the men and women of the different groups will likely identify with each other.

Stereotypes

An important challenge of managing a diverse workforce is the possibility that stereotypes about different groups could lead to unfair decision-making. Stereotypes are generalizations about a particular group of people. The assumption that women are more relationship-oriented, while men are more assertive, is an example of a stereotype. The problem with stereotypes is that people often use them to make decisions about a particular individual without actually verifying whether the assumption holds for the person in question. As a result, stereotypes often lead to unfair and inaccurate decision-making. For example, a hiring manager holding the stereotype mentioned above may prefer a male candidate for a management position over a well-qualified female candidate. The assumption would be that management positions require assertiveness and the male candidate would be more assertive than the female candidate. Being aware of these stereotypes is the first step to preventing them from affecting decision-making.

Specific Diversity Issues

Different demographic groups face unique work environments and varying challenges in the workplace. In this section, we will review the particular challenges associated with managing gender, race, religion, physical ability, and sexual orientation diversity in the workplace.

Gender Diversity in the Workplace

In the United States, two important pieces of legislation prohibit gender discrimination at work. The Equal Pay Act (1963) prohibits discrimination in pay based on gender. Title VII of the Civil Rights Act (1964) prohibits discrimination in all employment-related decisions based on gender. Despite the existence of strong legislation, women and men often face different treatment at work. The earnings gap and the glass ceiling are two of the key problems women may experience in the workplace.

Earnings Gap

An often publicized issue women face at work is the earnings gap. The median earnings of women who worked full time in 2008 was 79% of men working full time. Bureau of Labor Statistics. (2008). *Usual weekly earnings*. Retrieved November 4, 2008, from the Bureau of Labor Statistics Web site: http://www.bls.gov/news.release/wkyeng.nr0.htm. There are many potential explanations for the earnings gap that is often reported in the popular media. One explanation is that women are more likely to have gaps in their résumés because they are more likely to take time off to have children. Women are still the primary caregiver for young children in many families and career gaps tend to affect earnings potential because it prevents employees from accumulating job tenure. Another potential explanation is that women are less likely to pursue high-paying occupations such as engineering and business.

In fact, research shows that men and women have somewhat different preferences in job attributes, with women valuing characteristics such as good hours, an easy commute, interpersonal relationships, helping others, and opportunities to make friends more than men do.

In turn, men seem to value promotion opportunities, freedom, challenge, leadership, and power more than women do.Konrad, A. M., Ritchie, J. E., Lieb, P., & Corrigall, E. (2000). Sex differences and similarities in job attribute preferences: A meta-analysis. *Psychological Bulletin*, *126*, 593–641. These differences are relatively small, but they could explain some of the earnings gap. Finally, negotiation differences among women are often cited as a potential reason for the earnings gap. In general, women are less likely to initiate negotiations.Babcock, L., & Laschever, S. (2003). *Women don't ask*. Princeton, NJ: Princeton University Press. Moreover, when they actually negotiate, they achieve less favorable outcomes compared to men.Stuhlmacher, A. F., & Walters, A. E. (1999). Gender differences in negotiation outcome: A meta-analysis. *Personnel Psychology*, *52*, 653–677. Laboratory studies show that female candidates who negotiated were more likely to be penalized for their attempts to negotiate and male evaluators expressed an unwillingness to work with a female who negotiated. Bowles, H. R., & Babcock, L., & Lai, L. (2007). Social incentives for gender differences in the propensity to initiate negotiations: Sometimes it does hurt to ask. *Organizational Behavior and Human Decision Processes*, *103*, 84–103. The differences in the tendency to negotiate and success in negotiating are important factors contributing to the earnings gap. According to one estimate, as much as 34% of the differences between women's and men's pay can be explained by their starting salaries. Gerhart, B. (1990). Gender differences in current and starting salaries: The role of performance, college major, and job title. *Industrial & Labor Relations Review*, *43*, 418–434. When differences in negotiation skills or tendencies affect starting salaries, they tend to have a large impact over the course of years.

If the earnings gap could be traced only to résumé gaps, choice of different occupations, or differences in negotiation behavior, the salary difference might be viewed as legitimate. Yet, these factors fail to completely account for gender differences in pay, and lawsuits about gender discrimination in pay abound. In these lawsuits, stereotypes or prejudices about women seem to be the main culprit. In fact, according to a Gallup poll, women are over 12 times more likely than men to perceive gender-based discrimination in the workplace. Avery, D. R., McKay, P. F., & Wilson, D. C. (2008). What are the odds? How demographic similarity affects prevalence of perceived employment discrimination. *Journal of Applied Psychology*, *93*, 235–249. For example, Wal-Mart Stores Inc. was recently sued for alleged gender-discrimination in pay. One of the people who initiated the lawsuit was a female assistant manager who found out that a male assistant manager with similar qualifications was making $10,000 more per year. When she approached the store manager, she was told that the male manager had a "wife and kids to support." She was then asked to submit a household budget to justify a raise. Daniels, C. (2003, July 21). Women vs. Wal-Mart. *Fortune*, *148*, 78–82. Such explicit discrimination, while less frequent, contributes to creating an unfair work environment.

Glass Ceiling

Another issue that provides a challenge for women in the workforce is the so-called glass ceiling. While women may be represented in lower-level positions, they are less likely to be seen in higher management and executive suites of companies. In fact, while women constitute close to one-half of the workforce, men are four times more likely to reach the highest levels of organizations. Umphress, E. E., Simmons, A. L., Boswell, W. R., & Triana, M. C. (2008). Managing discrimination in selection: The influence of directives from an authority and social

dominance. *Journal of Applied Psychology*, *93*, 982–993. In 2008, only 12 of the *Fortune* 500 companies had female CEOs, including Xerox Corporation, PepsiCo, Kraft Foods Inc., and Avon Products Inc. The absence of women in leadership is unfortunate, particularly in light of studies that show the leadership performance of female leaders is comparable to, and in some dimensions such as transformational or change-oriented leadership, superior to, the performance of male leaders. Eagly, A. H., Karau S. J., & Makhijani, M. G. (1995). Gender and effectiveness of leaders: A meta-analysis. *Psychological Bulletin*, *117*, 125–145; Eagly, A. H., Johannesen-Schmidt, M. C., & Van Engen, M. L. (2003). *Psychological Bulletin*, *129*, 569–591.

Figure 11.1.3: Ursula Burns became president of Xerox Corporation in 2007. She is responsible for the company's global R&D, engineering, manufacturing, and marketing. *Used by permission of Xerox Corporation.*

One explanation for the glass ceiling is the gender-based stereotypes favoring men in managerial positions. Traditionally, men have been viewed as more assertive and confident than women, while women have been viewed as more passive and submissive. Studies show that these particular stereotypes are still prevalent among male college students, which may mean that these stereotypes may be perpetuated among the next generation of managers. Duehr, E. E., & Bono, J. E. (2006). Men, women and managers: Are stereotypes finally changing? *Personnel Psychology*, *59*, 815–846. Assumptions such as these are problematic for women's advancement because stereotypes associated with men are characteristics often associated with being a manager. Stereotypes are also found to influence how managers view male versus female employees' work accomplishments. For example, when men and women work together in a team

on a “masculine” task such as working on an investment portfolio and it is not clear to management which member has done what, managers are more likely to attribute the team’s success to the male employees and give less credit to the female employees. Heilman, M. E., & Haynes, M. C. (2005). No credit where credit is due: Attributional rationalization of women’s success in male-female teams. *Journal of Applied Psychology*, *90*, 905–916. It seems that in addition to working hard and contributing to the team, female employees should pay extra attention to ensure that their contributions are known to decision-makers.

There are many organizations making the effort to make work environments more welcoming to men and women. For example, IBM is reaching out to female middle school students to get them interested in science, hoping to increase female presence in the field of engineering. Thomas, D. A. (2004). Diversity as strategy. *Harvard Business Review*, *82*, 98–108. Companies such as IBM, Booz Allen Hamilton Inc., Ernst & Young Global Ltd., and General Mills Inc. top the 100 Best Companies list created by *Working Mother* magazine by providing flexible work arrangements to balance work and family demands. In addition, these companies provide employees of both sexes with learning, development, and networking opportunities.2007 100 Best companies. (2007). Retrieved November 4, 2008, from the *Working Mother* website: http://www.workingmother.com/?service=vpage/859.

Race Diversity in the Workplace

Race is another demographic characteristic that is under legal protection in the United States. Title VII of the Civil Rights Act (1964) prohibits race discrimination in all employment-related decisions. Yet race discrimination still exists in organizations. In a Korn-Ferry/Columbia University study of 280 minority managers earning more than $100,000, 60% of the respondents reported that they had seen discrimination in their work assignments and 45% have been the target of racial or cultural jokes. The fact that such discrimination exists even at higher levels in organizations is noteworthy. Allers, K. L. (2005). Won’t it be grand when we don’t need diversity lists? *Fortune*, *152*(4), 101; Mehta, S. N., Chen, C. Y., Garcia, F., & Vella-Zarb, K. (2000). What minority employees really want. *Fortune*, *142*(2), 180–184. In a different study of over 5,500 workers, only 32% reported that their company did a good job hiring and promoting minorities. Fisher, A. (2004). How you can do better on diversity. *Fortune*, *150*(10), 60. One estimate suggests that when compared to Caucasian employees, African Americans are four times more likely and Hispanics are three times more likely to experience discrimination. Avery, D. R., McKay, P. F., Wilson, D. C., & Tonidandel, S. (2007). Unequal attendance: The relationships between race, organizational diversity cues, and absenteeism. *Personnel Psychology*, *60*, 875–902.

Ethnic minorities experience both an earnings gap and a glass ceiling. In 2008, for every dollar a Caucasian male employee made, African American males made around 79 cents while Hispanic employees made 64 cents. Bureau of Labor Statistics. (2008). *Usual weekly earnings summary*. Retrieved November 4, 2008, from the Bureau of Labor Statistics Web site: http://www.bls.gov/news.release/wkyeng.nr0.htm. Among *Fortune* 500 companies, only three (American Express Company, Aetna Inc., and Darden Restaurants Inc.) have African American CEOs. It is interesting that while ethnic minorities face these challenges, the demographic trends are such that by 2042, Caucasians are estimated to constitute less than one-

half of the population in the United States. This demographic shift has already taken place in some parts of the United States such as the Los Angeles area where only 30% of the population is Caucasian. Dougherty, C. (2008, August 14). Whites to lose majority status in US by 2042. *Wall Street Journal*, p. A3.

Unfortunately, discrimination against ethnic minorities still occurs. One study conducted by Harvard University researchers found that when Chicago-area companies were sent fictitious résumés containing identical background information, résumés with "Caucasian" sounding names (such as Emily and Greg) were more likely to get callbacks compared to résumés with African American sounding names (such as Jamal and Lakisha). Bertrand, M., & Mullainathan, S. (2004). Are Emily and Greg more employable than Lakisha and Jamal? A field experiment on labor market discrimination. *American Economic Review*, *94*, 991–1013.

Studies indicate that ethnic minorities are less likely to experience a satisfying work environment. One study found that African Americans were more likely to be absent from work compared to Caucasians, but this trend existed only in organizations viewed as not valuing diversity. Avery, D. R., McKay, P. F., Wilson, D. C., & Tonidandel, S. (2007). Unequal attendance: The relationships between race, organizational diversity cues, and absenteeism. *Personnel Psychology*, *60*, 875–902. Similarly, among African Americans, the perception that the organization did not value diversity was related to higher levels of turnover.McKay, P. F., Avery, D. R., Tonidandel, S., Morris, M. A., Hernandez, M., & Hebl, M. R. (2007). Racial differences in employee retention: Are diversity climate perceptions the key? *Personnel Psychology*, *60*, 35–62. Another study found differences in the sales performance of Hispanic and Caucasian employees, but again this difference disappeared when the organization was viewed as valuing diversity.McKay, P., Avery, D. R., & Morris, M. A. (2008). Mean racial-ethnic differences in employee sales performance: The moderating role of diversity climate. *Personnel Psychology*, *61*, 349–374. It seems that the *perception* that the organization does not value diversity is a fundamental explanation for why ethnic minorities may feel alienated from coworkers. Creating a fair work environment where diversity is valued and appreciated seems to be the key.

Organizations often make news headlines for alleged or actual race discrimination, but there are many stories involving complete turnarounds, suggesting that conscious planning and motivation to improve may make organizations friendlier to all races. One such success story is Denny's Corporation. In 1991, Denny's restaurants settled a $54 million race discrimination lawsuit. In 10 years, the company was able to change the situation completely. Now, women and minorities make up half of their board and almost half of their management team. The company started by hiring a chief diversity officer who reported directly to the CEO. The company implemented a diversity-training program, extended recruitment efforts to diverse colleges, and increased the number of minority-owned franchises. At the same time, customer satisfaction among African Americans increased from 30% to 80%. Speizer, I. (2004). Diversity on the menu. *Workforce Management*, *83*(12), 41–45.

Age Diversity in the Workplace

The workforce is rapidly aging. By 2015, those who are 55 and older are estimated to constitute 20% of the workforce in the United States. The same trend seems to be occurring elsewhere in the world. In the European Union, employees over 50 years of age are projected to increase by 25% in the next 25 years. Avery, D. R., McKay, P. F., & Wilson, D. C. (2007). Engaging the aging workforce: The relationship between perceived age similarity, satisfaction with coworkers, and employee engagement. *Journal of Applied Psychology*, *92*, 1542–1556. According to International Labor Organization (ILO), out of the world's working population, the largest group is those between 40 and 44 years old. In contrast, the largest segment in 1980 was the 20- to 24-year-old group. International Labor Organization. (2005). *Yearly statistics*. Geneva, Switzerland: ILO. In other words, age diversity at work will grow in the future.

What happens to work performance as employees get older? Research shows that age is correlated with a number of positive workplace behaviors, including higher levels of citizenship behaviors such as volunteering, higher compliance with safety rules, lower work injuries, lower counterproductive behaviors, and lower rates of tardiness or absenteeism. Ng, T. W. H., & Feldman, D. C. (2008). The relationship of age to ten dimensions of job performance. *Journal of Applied Psychology*, *93*, 392–423. As people get older, they are also less likely to want to quit their job when they are dissatisfied at work. Hellman, C. M. (1997). Job satisfaction and intent to leave. *Journal of Social Psychology*, *137*, 677–689.

Despite their positive workplace behaviors, employees who are older often have to deal with age-related stereotypes at work. For example, a review of a large number of studies showed that those between 17 and 29 years of age tend to rate older employees more negatively, while younger employees were viewed as more qualified and having higher potential.Finkelstein, L. M., Burke, M. J., & Raju, N. S. (1995). Age discrimination in simulated employment contexts: An integrative analysis. *Journal of Applied Psychology*, *80*, 652–663. However, these stereotypes have been largely refuted by research. Another review showed that stereotypes about older employees—they perform on a lower level, they are less able to handle stress, or their performance declines with age—are simply inaccurate. Posthuma, R. A., & Campion, M. A. (in press). Age stereotypes in the workplace: Common stereotypes, moderators, and future research directions. *Journal of Management*. The problem with these stereotypes is that they may discourage older workers from remaining in the workforce or may act as a barrier to their being hired in the first place.

In the United States, age discrimination is prohibited by the Age Discrimination in Employment Act of 1967, which made it illegal for organizations to discriminate against employees over 40 years of age. Still, age discrimination is prevalent in workplaces. For example, while not admitting wrongdoing, Honeywell International Inc. recently settled an age discrimination lawsuit for $2.15 million. A group of older sales representatives were laid off during company reorganization while younger employees with less experience were kept in their positions. Equal Employment Opportunity Commission. (2004). Honeywell International to pay $2.15 million for age discrimination in EEOC settlement. Retrieved November 7, 2008, from the Equal Employment Opportunity Commission Web site: http://www.eeoc.gov/press/10-4-04a.html. Older employees may also face discrimination because some jobs have a perceived

"correct age." This was probably the reason behind the lawsuit International Creative Management Inc. faced against 150 TV writers. The lawsuit claimed that the talent agency systematically prevented older workers from getting jobs at major networks.TV writers settle age discrimination lawsuit. (2008, August 20). Retrieved November 7, 2008, from International Business Times Web site: http://www.ibtimes.com/articles/20080820/tv-writers-settle-age-discrimination-lawsuit.htm.

What are the challenges of managing age diversity beyond the management of stereotypes? Age diversity within a team can actually lead to higher team performance. In a simulation, teams with higher age diversity were able to think of different possibilities and diverse actions, leading to higher performance for the teams. Kilduff, M., Angelmar, R., & Mehra, A. (2000). Top management-team diversity and firm performance: Examining the role of cognitions. *Organization Science*, *11*, 21–34. At the same time, managing a team with age diversity may be challenging because different age groups seem to have different opinions about what is fair treatment, leading to different perceptions of organizational justice. Colquitt, J. A., Noe, R. A., & Jackson, C. L. (2002). Justice in teams: Antecedents and consequences of procedural justice climate. *Personnel Psychology*, *55*, 83–109. Age diversity also means that the workforce will consist of employees from different generations. Some organizations are noticing a generation gap and noting implications for the management of employees. For example, the pharmaceutical company Novo Nordisk Inc. noticed that baby boomers (those born between 1946 and 1964) were competitive and preferred individual feedback on performance, while Generation Y workers (born between 1979 and 1994) were more team-oriented. This difference led one regional manager to start each performance feedback e-mail with recognition of team performance, which was later followed by feedback on individual performance. Similarly, Lockheed Martin Corporation noticed that employees from different generations had different learning styles, with older employees preferring PowerPoint presentations and younger employees preferring more interactive learning. White, E. (2008, June 30). Age is as age does: Making the generation gap work for you. *Wall Street Journal*, p. B6. Paying attention to such differences and tailoring various aspects of management to the particular employees in question may lead to more effective management of an age-diverse workforce.

Religious Diversity in the Workplace

In the United States, employers are prohibited from using religion in employment decisions based on Title VII of the Civil Rights Act of 1964. Moreover, employees are required to make reasonable accommodations to ensure that employees can practice their beliefs unless doing so provides an unreasonable hardship on the employer. Equal Employment Opportunity Commission. (2007). Religious discrimination. Retrieved November 7, 2008, from the Equal Employment Opportunity Commission Web site: http://www.eeoc.gov/types/religion.html. After September 11, cases involving religion and particularly those involving Muslim employees have been on the rise. Bazar, E. (2008, October 16). Prayer leads to work disputes. *USA Today*. Retrieved January 29, 2009, from http://www.usatoday.com/news/nation/2008-10-15-Muslim_N.htm. Religious discrimination often occurs because the religion necessitates modifying the employee's schedule. For example, devout Muslim employees may want to pray five times a day with each prayer lasting 5 to 10 minutes. Some Jewish employees may want to take off Yom Kippur and Rosh Hashanah, although these days are not recognized as holidays in

the United States. These situations pit employers' concerns for productivity against employees' desires to fulfill religious obligations.

Accommodating someone's religious preferences may also require companies to relax their dress code to take into account religious practices such as wearing a turban for Sikhs or covering one's hair with a scarf for Muslim women. In these cases, what matters most is that the company makes a good faith attempt to accommodate the employee. For example, in a recent lawsuit that was decided in favor of Costco Wholesale Corporation, the retailer was accused of religious discrimination. A cashier who belonged to the Church of Body Modification, which is a church with about 1,000 members worldwide, wanted to be able to display her tattoos and facial piercings, which was against the dress code of Costco. Costco wanted to accommodate the employee by asking the individual to cover the piercings with skin-colored Band-Aids, which the employee refused. This is likely the primary reason why the case was decided in favor of Costco. Wellner, A. S. (2005). Costco piercing case puts a new face on the issue of wearing religious garb at work. *Workforce Management*, *84*(6), 76–78.

Employees with Disabilities in the Workplace

Employees with a wide range of physical and mental disabilities are part of the workforce. In 2008 alone, over 19,000 cases of discrimination based on disabilities have been filed with the EEOC. The Americans with Disabilities Act of 1990 (ADA) prohibits discrimination in employment against individuals with physical as well as mental disabilities if these individuals are otherwise qualified to do their jobs with or without reasonable accommodation. For example, an organization may receive a job application from a hearing-impaired candidate whose job responsibilities will include talking over the phone. With the help of a telephone amplifier, which costs around $50, the employee will be able to perform the job; therefore, the company cannot use the hearing impairment as a reason not to hire the person, again, as long as the employee is otherwise qualified. In 2008, the largest groups of complaints were cases based on discrimination related to disabilities or illnesses such as cancer, depression, diabetes, hearing impairment, manic-depressive disorder, and orthopedic impairments, among others. Equal Employment Opportunity Commission. (2008). ADA charge data by impairments/bases–merit factor resolutions. FY 1997–FY 2007. Retrieved November 10, 2008, from the Equal Employment Opportunity Commission Web site: http://www.eeoc.gov/stats/ada-merit.html. Particularly employees suffering from illnesses that last for a long time and require ongoing care seem to be at a disadvantage, because they are more likely to be stereotyped, locked into dead-end jobs, and employed in jobs that require substantially lower skills and qualifications than they possess. They also are more likely to quit their jobs. Beatty, J. E., & Joffe, R. (2006). An overlooked dimension of diversity: The career effects of chronic illness. *Organizational Dynamics*, *35*, 182–195.

What can organizations do to create a better work environment for employees with disabilities? One legal requirement is that, when an employee brings up a disability, the organization should consider reasonable accommodations. This may include modifying the employee's schedule and reassigning some nonessential job functions. Organizations that offer flexible work hours may also make it easier for employees with disabilities to be more effective. Finally, supportive relationships with others seem to be the key for making these employees feel at home.

Particularly, having an understanding boss and an effective relationship with supervisors are particularly important for employees with disabilities. Because the visible differences between individuals may act as an initial barrier against developing rapport, employees with disabilities and their managers may benefit from being proactive in relationship development. Colella, A., & Varma A. (2001). The impact of subordinate disability on leader-member exchange relationships. *Academy of Management Journal*, *44*, 302–315.

Sexual Orientation Diversity in the Workplace

Lesbian, gay, bisexual, and transgender (LGBT) employees in the workplace face a number of challenges and barriers to employment. There is currently no federal law in the United States prohibiting discrimination based on sexual orientation, but as of 2008, 20 states, as well as the District of Columbia, had laws prohibiting discrimination in employment based on sexual orientation. Human Rights Campaign. (2008). Working for lesbian, gay, bisexual, and transgender equal rights. Retrieved November 7, 2008, from the Human Rights Campaign Web site: http://www.hrc.org/issues/workplace/workplace_laws.asp.

Research shows that one of the most important issues relating to sexual orientation is the disclosure of sexual identity in the workplace. According to one estimate, up to one-third of lesbian, gay, and bisexual employees do not disclose their sexual orientation at work. Employees may fear the reactions of their managers and coworkers, leading to keeping their sexual identity a secret. In reality, though, it seems that disclosing sexual orientation is not the key to explaining work attitudes of these employees—it is whether or not they are *afraid* to disclose their sexual identity. In other words, those employees who fear that full disclosure would lead to negative reactions experience lower job satisfaction, reduced organizational commitment, and higher intentions to leave their jobs. Ragins, B. R., Singh, R., & Cornwell, J. M. (2007). Making the invisible visible: Fear and disclosure of sexual orientation at work. *Journal of Applied Psychology*, *92*, 1103–1118. Creating an environment where all employees feel welcome and respected regardless of their sexual orientation is the key to maintaining a positive work environment.

How can organizations show their respect for diversity in sexual orientation? Some companies start by creating a written statement that the organization will not tolerate discrimination based on sexual orientation. They may have workshops addressing issues relating to sexual orientation and facilitate and create networking opportunities for lesbian and gay employees. Perhaps the most powerful way in which companies show respect for sexual orientation diversity is by extending benefits to the partners of same-sex couples. In fact, more than half of *Fortune* 500 companies currently offer health benefits to domestic partners of same-sex couples. Research shows that in companies that have these types of programs, discrimination based on sexual orientation is less frequent, and the job satisfaction and commitment levels are higher. Button, S. (2001). Organizational efforts to affirm sexual diversity: A cross-level examination. *Journal of Applied Psychology*, *86*, 17–28.

OB TOOLBOX: I THINK I AM BEING ASKED ILLEGAL INTERVIEW QUESTIONS. WHAT CAN I DO?

In the United States, demographic characteristics such as race, gender, national origin, age, and disability status are protected by law. Yet according to a survey of 4,000 job seekers, about one-third of job applicants have been asked illegal interview questions. How can you answer such questions?

Here are some options.

- *Refuse to answer*. You may point out that the question is illegal and refuse to answer. Of course, this may cost you the job offer, because you are likely to seem confrontational and aggressive.
- *Answer shortly*. Instead of giving a full answer to a question such as "are you married," you could answer the question briefly and change the subject. In many cases, the interviewer may be trying to initiate small talk and may be unaware that the question is potentially illegal.
- *Answer the intent*. Sometimes, the illegal question hides a legitimate concern. When you are being asked where you are from, the potential employer might be concerned that you do not have a work permit. Addressing the issue in your answer may be better than answering the question you are being asked.
- *Walk away from the interview*. If you feel that the intent of the question is discriminatory, and if you feel that you would rather not work at a company that would ask such questions, you can always walk away from the interview. If you feel that you are being discriminated against, you may also want to talk to a lawyer later on.

Sources: Cottle, M. (1999, April 25). Too personal at the interview. *New York Times*, p. 10; Thomas, J. (1999, July–August). Beware of illegal interview questions. *Women in Business*, *51*(4), 14.

Suggestions for Managing Demographic Diversity

What can organizations do to manage diversity more effectively? In this section, we review research findings and the best practices from different companies to create a list of suggestions for organizations.

Build a Culture of Respecting Diversity

Figure 11.1.4: UPS operates in 200 countries, including Italy where a boat is carrying packages on the Canal Grande in Venice. At UPS, 58% of all senior officers are women or minorities. *Source:* http://en.wikipedia.org/wiki/Image:Venezia0750UPS.jpg.

In the most successful companies, diversity management is not the responsibility of the human resource department. Starting from top management and including the lowest levels in the hierarchy, each person understands the importance of respecting others. If this respect is not part of an organization's culture, no amount of diversity training or other programs are likely to be effective. In fact, in the most successful companies, diversity is viewed as everyone's responsibility. The United Parcel Service of America Inc. (UPS), the international shipping company, refuses to hire a diversity officer, underlining that it is not one person's job. Companies with a strong culture—where people have a sense of shared values, loyalty to the organization is rewarded, and team performance is celebrated—enable employees with vastly different demographics and backgrounds to feel a sense of belonging.Chatman, J. A., Polzer, J. T., Barsade, S. G., & Neale, M. A. (1998). Being different yet feeling similar: The influence of demographic composition and organizational culture on work processes and outcomes. *Administrative Science Quarterly*, *43*, 749–780; Fisher, A. (2004). How you can do better on diversity. *Fortune*, *150*(10), 60.

Make Managers Accountable for Diversity

People are more likely to pay attention to aspects of performance that are measured. In successful companies, diversity metrics are carefully tracked. For example, in PepsiCo, during the tenure of former CEO Steve Reinemund, half of all new hires had to be either women or minorities. Bonuses of managers partly depended on whether they had met their diversity-related goals. Yang, J. L. (2006). Pepsi's diversity push pays off. *Fortune*, *154*(5), 15. When managers are evaluated and rewarded based on how effective they are in diversity management, they are more likely to show commitment to diversity that in turn affects the diversity climate in the rest of the organization.

Diversity Training Programs

Many companies provide employees and managers with training programs relating to diversity. However, not all diversity programs are equally successful. You may expect that more successful programs are those that occur in companies where a culture of diversity exists. A study of over 700 companies found that programs with a higher perceived success rate were those that occurred in companies where top management believed in the importance of diversity, where there were explicit rewards for increasing diversity of the company, and where managers were required to attend the diversity training programs. Rynes, S., & Rosen, B. (1995). A field survey of factors affecting the adoption and perceived success of diversity training. *Personnel Psychology*, *48*, 247–270.

Review Recruitment Practices

Companies may want to increase diversity by targeting a pool that is more diverse. There are many minority professional groups such as the National Black MBA Association or the Chinese Software Professionals Association. By building relations with these occupational groups, organizations may attract a more diverse group of candidates to choose from. The auditing company Ernst & Young Global Ltd. increases diversity of job candidates by mentoring

undergraduate students. Nussenbaum, E. (2003). The lonely recruiter. *Business 2.0*, *4*(9), 132. Companies may also benefit from reviewing their employment advertising to ensure that diversity is important at all levels of the company. Avery, D. R. (2003). Reactions to diversity in recruitment advertising: Are differences black and white? *Journal of Applied Psychology*, *88*, 672–679.

Affirmative Action Programs

Policies designed to recruit, promote, train, and retain employees belonging to a protected class are referred to as affirmative action. Based on Executive order 11246 (1965), federal contractors are required to use affirmative action programs. In addition, the federal government, many state and local governments, and the U.S. military are required to have affirmative action plans. An organization may also be using affirmative action as a result of a court order or due to a past history of discrimination. Affirmative action programs are among the most controversial methods in diversity management because some people believe that they lead to an unfair advantage for minority members.

In many cases, the negative perceptions about affirmative action can be explained by misunderstandings relating to what such anti-discrimination policies entail. Moreover, affirmative action means different things to different people and therefore it is inaccurate to discuss affirmative action as a uniform package.

Four groups of programs can be viewed as part of affirmative action programs: Cropanzano, R., Slaughter, J. E., & Bachiochi, P. D. (2005). Organizational justice and black applicants' reactions to affirmative action. *Journal of Applied Psychology*, *90*, 1168–1184; Kravitz, D. A. (2008). The diversity-validity dilemma: Beyond selection—The role of affirmative action. *Personnel Psychology*, *61*, 173–193; Voluntary diversity plans can lead to risk. (2007). *HR Focus*, *84*(6), 2.

1. **Simple elimination of discrimination**. These programs are the least controversial and are received favorably by employees.
2. **Targeted recruitment**. These affirmative action plans involve ensuring that the candidate pool is diverse. These programs are also viewed as fair by most employees.
3. **Tie-breaker**. In these programs, if all other characteristics are equal, then preference may be given to a minority candidate. In fact, these programs are not widely used and their use needs to be justified by organizations. In other words, organizations need to have very specific reasons for why they are using this type of affirmative action, such as past illegal discrimination. Otherwise, their use may be illegal and lead to reverse discrimination. These programs are viewed as less fair by employees.
4. **Preferential treatment**. These programs involve hiring a less-qualified minority candidate. Strong preferential treatment programs are illegal in most cases.

It is plausible that people who are against affirmative action programs may have unverified assumptions about the type of affirmative action program the company is using. Informing employees about the specifics of how affirmative action is being used may be a good way of dealing with any negative attitudes. In fact, a review of the past literature revealed that when

specifics of affirmative action are not clearly defined, observers seem to draw their own conclusions about the particulars of the programs. Harrison, D. A., Kravitz D. A., Mayer, D. M., Leslie, L. M., & Lev-Arey D. (2006). Understanding attitudes toward affirmative action programs in employment: Summary in meta-analysis of 35 years of research. *Journal of Applied Psychology*, *91*, 1013–1036.

In addition to employee reactions to affirmative action, there is some research indicating that affirmative action programs may lead to stigmatization of the perceived beneficiaries. For example, in companies using affirmative action, coworkers of new hires may make the assumption that the new hire was chosen due to gender or race as opposed to having the necessary qualifications. These effects may even occur in the new hires themselves, who may have doubts about the fact that they were chosen because they were the best candidate for the position. Research also shows that giving coworkers information about the qualifications and performance of the new hire eliminates these potentially negative effects of affirmative action programs.Heilman, M. E., Kaplow, S. R., Amato, M. A., & Stathatos, P. (1993). When similarity is a liability: Effects of sex-based preferential selection on reactions to like-sex and different-sex others. *Journal of Applied Psychology*, *78*, 917–927; Heilman, M. E., Rivero, C. J., & Brett, J. F. (1991). Skirting the competence issue: Effects of sex-based preferential selection on task choices of women and men. *Journal of Applied Psychology*, *76*, 99–105; Heilman, M. E., Simon, M. C., & Repper, D. P. (1987). Internationally favored, unintentionally harmed? Impact of sex-based preferential selection on self-perceptions and self-evaluations. *Journal of Applied Psychology*, *72*, 62–68; Kravitz, D. A. (2008). The diversity-validity dilemma: Beyond selection: The role of affirmative action. *Personnel Psychology*, *61*, 173–193.

OB TOOLBOX: DEALING WITH BEING DIFFERENT

At any time in your career, you may find yourself in a situation in which you are different from those around you. Maybe you are the only male in an organization where most of your colleagues and managers are females. Maybe you are older than all your colleagues. How do you deal with the challenges of being different?

- *Invest in building effective relationships*. Early in a relationship, people are more attracted to those who are demographically similar to them. This means that your colleagues or manager may never get to find out how smart, fun, or hardworking you are if you have limited interactions with them. Create opportunities to talk to them. Be sure to point out areas of commonality.
- *Choose your mentor carefully*. Mentors may help you make sense of the organization's culture, give you career-related advice, and help you feel like you belong. That said, how powerful and knowledgeable your mentor is also matters. You may be more attracted to someone at your same level and who is similar to you, but you may have more to learn from someone who is more experienced, knowledgeable, and powerful than you are.
- *Investigate company resources*. Many companies offer networking opportunities and interest groups for women, ethnic minorities, and employees with disabilities among others. Check out what resources are available through your company.
- *Know your rights*. You should know that harassment based on protected characteristics such as gender, race, age, or disabilities, as well as discrimination based on these traits are illegal in the

United States. If you face harassment or discrimination, you may want to notify your manager or your company's HR department.

KEY TAKEAWAY

Organizations managing diversity effectively benefit from diversity because they achieve higher creativity, better customer service, higher job satisfaction, higher stock prices, and lower litigation expenses. At the same time, managing a diverse workforce is challenging for several key reasons. Employees are more likely to associate with those who are similar to them early in a relationship, the distribution of demographic traits could create faultlines within a group, and stereotypes may act as barriers to advancement and fair treatment of employees. Demographic traits such as gender, race, age, religion, disabilities, and sexual orientation each face unique challenges. Organizations can manage demographic diversity more effectively by building a culture of respect, making managers accountable for diversity, creating diversity-training programs, reviewing recruitment practices, and under some conditions, utilizing affirmative action programs.

EXERCISES

1. What does it mean for a company to manage diversity effectively? How would you know if a company is doing a good job of managing diversity?
2. What are the benefits of effective diversity management?
3. How can organizations deal with the "similarity-attraction" phenomenon? Left unchecked, what are the problems this tendency can cause?
4. What is the earnings gap? Who does it affect? What are the reasons behind the earnings gap?
5. Do you think that laws and regulations are successful in eliminating discrimination in the workplace? Why or why not?

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11.2: Accommodating Different Abilities and Faiths

Learning Objectives

By the end of this section, you will be able to:

1. Identify workplace accommodations often provided for persons with differing abilities
2. Describe workplace accommodations made for religious reasons

The traditional definition of diversity is broad, encompassing not only race, ethnicity, and gender but also religious beliefs, national origin, and cognitive and physical abilities as well as sexual preference or orientation. This section examines two of these categories, religion and ability, looking at how an ethical manager handles them as part of an overall diversity policy. In both cases, the concept of **reasonable accommodation** means an employer must try to allow for differences among the workforce.

Protections for People with Disabilities

In the United States, the Americans with Disabilities Act (ADA), passed in 1990, stipulates that a person has a disability if he or she has a physical or mental impairment that reduces participation in "a major life activity," such as work. An employer may not discriminate in offering employment to an individual who is diagnosed as having such a disability. Furthermore, if employment is offered, the employer is obliged to make reasonable accommodations to enable him or her to carry out normal job tasks. Making reasonable accommodations may include altering the physical workplace so it is readily accessible, restructuring a job, providing or modifying equipment or devices, or offering part-time or modified work schedules. Other accommodations could include providing readers, interpreters, or other necessary forms of assistance such as an assistive animal. The ADA also prohibits discriminating against individuals with disabilities in providing access to government services, public accommodations, transportation, telecommunications, and other essential services.

Figure 11.2.1: A person with a service dog can usually perform all the essential function of the job, with some assistance. (credit: "DSC_004" by Aberdeen Proving Ground/Flickr, CC BY 2.0)

Access and accommodation for employees with physical or mental disabilities are good for business because they expand the potential pool of good workers. It is also ethical to have compassion for those who want to work and be contributing members of society. This principle holds for customers as well as employees. Recognizing the need for protection in this area, the federal government has enacted several laws to provide it. The Disability Rights Division of the U.S. Department of Justice lists ten different federal laws protecting people with disabilities, including not only the ADA but also laws such as the Rehabilitation Act, the Air Carrier Access Act, and the Architectural Barriers Act.

LINK TO LEARNING

The EEOC is the primary federal agency responsible for enforcing the ADA (as well as Title VII of the Civil Rights Act of 1964, mentioned earlier in the chapter). It hears complaints, tries to settle cases through administrative action, and, if cases cannot be settled, works with the Department of Justice to file lawsuits against violators. Visit the EEOC website to learn more.

A key part of complying with the law is understanding and applying the concept of *reasonableness*: "An employer is required to provide a reasonable accommodation to a qualified applicant or employee with a disability unless the employer can show that the accommodation would be an **undue hardship**—that is, that it would require significant difficulty or expense."

The law does not require an employee to refer to the ADA or to "disability" or "reasonable accommodation" when requesting some type of assistance. Managers need to be able to recognize the variety of ways in which a request for an accommodation is communicated. For example, an employee might not specifically say, "I need a reasonable accommodation for my disability" but rather, "I'm having a hard time getting to work on time because of the medical treatments I'm undergoing." This example demonstrates a challenge employers may face under the ADA in properly identifying requests for accommodation.

CASES FROM THE REAL WORLD

The ADA and Verizon Attendance Policy

Managers are usually sticklers about attendance, but Verizon recently learned an expensive lesson about its mandatory attendance policies from a 2011 class action lawsuit by employees and the EEOC. The suit asserted that Verizon denied reasonable accommodations to several hundred employees, disciplining or firing them for missing too many days of work and refusing to make exceptions for those whose absences were caused by their disabilities. According to the EEOC, Verizon violated the ADA because its no-fault attendance policy was an inflexible and "unreasonable" one-size-fits-all rule.

The EEOC required Verizon to pay $20 million to settle the suit, the largest single disability discrimination settlement in the agency's history. The settlement also forced Verizon to change its attendance policy to include reasonable accommodations for persons with disabilities. A third

requirement was that Verizon provide regular training on ADA requirements to all managers responsible for administering attendance policies.

Critical Thinking

- What are some specific rules that would fit within a fair and reasonable attendance policy?
- How would you decide whether an employee was taking advantage of an absenteeism policy?

Managing Religious Diversity in the Workplace

Title VII of the CRA, which governs nondiscrimination, applies the same rules to the religious beliefs (or non-beliefs) of employees and job applicants as it does to race, gender, and other categories. The essence of the law mandates four tenets that all employers should follow: non-discrimination, non-harassment, non-retaliation, and reasonable accommodation.

Regulations require that an employee notify the employer of a bona fide religious belief for which he or she wants protection, but the employee need not expressly request a specific accommodation. The employer must consider all possible accommodations that do not require violating the individual's beliefs and/or practices, such as allowing time off. However, the accommodation need not pose undue hardship on the firm, in terms of either scheduling or financial sacrifice. The employer must present proof of hardship if it decides it cannot offer an accommodation.

Figure 11.2.2: This calendar shows the significant number of holidays and observances an employer must consider with regard to time-off policies, including holidays of the three major religions, secular days, and other traditional days off. It may be a challenge to give everyone all preferred days off. (credit: modification of "2019 Calendar" by "Firkin"/openclipart, Public Domain)

Some cases of accommodation are based on cultural heritage rather than religion.

WHAT WOULD YOU DO?

Can Everyone's Wishes Be Accommodated?

You are a manager in a large Texas-based oil and gas company planning an annual summer company picnic and barbecue on the weekend of June 19. The oil industry has a long tradition of outdoor barbecues, and this one is a big morale-building event. However, June 19 is "Juneteenth," the day on which news of the Emancipation Proclamation reached slaves in Texas in 1865. Several African American employees always attend the barbecue event and are looking forward to it, but they also want to celebrate Emancipation Day, rich in history and culture and accompanied by its own official event. The picnic date cannot be easily rescheduled because of all the catering arrangements that had to be made.

Critical Thinking

- Is there a way to permit some employees to celebrate both occasions without inconveniencing others who will be attending only one?
- What would you do as the manager, keeping in mind that you do not want to offend anyone?

Reasonable accommodation may require more than just a couple of hours off to go to weekly worship or to celebrate a holiday. It may extend to dress and uniform requirements, grooming rules, work rules and responsibilities, religious expression and displays, prayer or meditation rooms, and dietary issues.

LINK TO LEARNING

The Sikh faith dates to roughly the fourteenth century in India. Its practitioners have made their way to many Western nations, including the United Kingdom, Canada, Italy, and the United States. Sikhs in the West have experienced discrimination due to the distinctive turbans adult males wear, which are sometimes mistaken for Islamic apparel. Men are also required to wear a dagger called a *kirpan*. California law permits religious observers to wear a sheathed dagger openly, but not hidden away. Watch this video showing a San Joaquin County Sheriff's sergeant explaining the accommodation given to Sikhs to wear a *kirpan* in public to learn more. How comfortable are you with permitting daggers to be carried openly in the workplace?

The law also protects those who do not have traditional beliefs. In *Welsh v. United States* (1970), the Supreme Court ruled that any belief occupying "a place parallel to that filled by the God of those admittedly qualifying for the exception" is covered by the law. A nontheistic value system consisting of personal, moral, or ethical beliefs that is sincerely held with the strength of traditional religious views is deserving of protection. Protected individuals need not have a religion; indeed, if atheist or agnostic, they may have no religion at all.

Religion has become a hot-button issue for some political groups in the United States. Religious tolerance is the official national policy enshrined in the Constitution, but it has come under attack by some who want to label the United States an exclusively Christian nation.

CASES FROM THE REAL WORLD

The Abercrombie & Fitch Religious Discrimination Case

The U.S. Supreme Court, in a 2015 case involving Abercrombie & Fitch, ruled that that "an employer may not refuse to hire an applicant for work if the employer was motivated by avoiding the need to accommodate a religious practice," and that doing so violates the prohibition against religious discrimination contained in the CRA of 1964, Title VII. According to the EEOC general counsel David Lopez, "This case is about defending the American principles of religious freedom and tolerance. This decision is a victory for our increasingly diverse society."

The case arose when, as part of her Muslim faith, a teenage girl named Samantha Elauf wore a hijab (headscarf) to a job interview with Abercrombie & Fitch. Elauf was denied a job because she did not conform to the company's "Look Policy," which Abercrombie claimed banned head coverings. Elauf filed a complaint with the EEOC alleging religious discrimination, and the EEOC, in turn, filed suit against Abercrombie & Fitch, alleging it refused to hire Elauf because of her religious beliefs and failed to accommodate her by making an exception to its "Look Policy."

"I was a teenager who loved fashion and was eager to work for Abercrombie & Fitch," said Elauf. "Observance of my faith should not have prevented me from getting a job. I am glad that I stood up for my rights, and happy that the EEOC was there for me and took my complaint to the courts. I am grateful to the Supreme Court for the decision and hope that other people realize that this type of discrimination is wrong and the EEOC is there to help."

Critical Thinking

- Does a retail clothing store have an interest in employee appearance that it can justify in terms of customer sales?
- Does it matter to you what a sales associate looks like when you shop for clothes? Why or why not?

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11.3: The Age Discrimination in Employment Act of 1967

EDITOR'S NOTE:

The following is the text of the Age Discrimination in Employment Act of 1967 (Pub. L. 90-202) (ADEA), as amended, as it appears in volume 29 of the United States Code, beginning at section 621. The ADEA prohibits employment discrimination against persons 40 years of age or older. The Older Workers Benefit Protection Act (Pub. L. 101-433) amended several sections of the ADEA. In addition, section 115 of the Civil Rights Act of 1991 (P.L. 102-166) amended section 7(e) of the ADEA (29 U. S.C. 626(e)). Cross-references to the ADEA as enacted appear in italics following each section heading. Editor's notes also appear in italics.

An Act

To prohibit age discrimination in employment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Age Discrimination in Employment Act of 1967."

* * *

Congressional Statement of Findings and Purpose

SEC. 621. *[Section 2]*

a. The Congress hereby finds and declares that-
    1. in the face of rising productivity and affluence, older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs;
    2. the setting of arbitrary age limits regardless of potential for job performance has become a common practice, and certain otherwise desirable practices may work to the disadvantage of older persons;
    3. the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers; their numbers are great and growing; and their employment problems grave;
    4. the existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.
b. It is therefore the purpose of this chapter to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.

Education and Research Program; Recommendation to Congress

SEC. 622. *[Section 3]*

a. The EEOC *[originally, the Secretary of Labor]* shall undertake studies and provide information to labor unions, management, and the general public concerning the needs and abilities of older workers, and their potentials for continued employment and contribution to the economy. In order to achieve the purposes of this chapter, the EEOC *[originally, the Secretary of Labor]* shall carry on a continuing program of education and information, under which he may, among other measures-
    1. undertake research, and promote research, with a view to reducing barriers to the employment of older persons, and the promotion of measures for utilizing their skills;
    2. publish and otherwise make available to employers, professional societies, the various media of communication, and other interested persons the findings of studies and other materials for the promotion of employment;
    3. foster through the public employment service system and through cooperative effort the development of facilities of public and private agencies for expanding the opportunities and potentials of older persons;
    4. sponsor and assist State and community informational and educational programs.
b. Not later than six months after the effective date of this chapter, the Secretary shall recommend to the Congress any measures he may deem desirable to change the lower or upper age limits set forth in section 631 of this title *[section 12]*.

Prohibition of Age Discrimination

SEC. 623. *[Section 4]*

a. Employer practices
    - It shall be unlawful for an employer-
    - to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age;
    - to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age; or
    - to reduce the wage rate of any employee in order to comply with this chapter.
b. It shall be unlawful for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of such individual's age, or to classify or refer for employment any individual on the basis of such individual's age.
c. Labor organization practices
    - It shall be unlawful for a labor organization-
    - to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his age;

- to limit, segregate, or classify its membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's age;
- to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

d. Opposition to unlawful practices; participation in investigations, proceedings, or litigation
   - It shall be unlawful for an employer to discriminate against any of his employees or applicants for employment, for an employment agency to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because such individual, member or applicant for membership has opposed any practice made unlawful by this section, or because such individual, member or applicant for membership has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or litigation under this chapter.

e. Printing or publication of notice or advertisement indicating preference, limitation, etc.
   - It shall be unlawful for an employer, labor organization, or employment agency to print or publish, or cause to be printed or published, any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, indicating any preference, limitation, specification, or discrimination, based on age.

f. Lawful practices; age an occupational qualification; other reasonable factors; laws of foreign workplace; seniority system; employee benefit plans; discharge or discipline for good cause
   - It shall not be unlawful for an employer, employment agency, or labor organization-
     1. to take any action otherwise prohibited under subsections (a), (b), (c), or (e) of this section where age is a bona fide occupational qualification reasonably necessary to the normal operation of the particular business, or where the differentiation is based on reasonable factors other than age, or where such practices involve an employee in a workplace in a foreign country, and compliance with such subsections would cause such employer, or a corporation controlled by such employer, to violate the laws of the country in which such workplace is located;
     2. to take any action otherwise prohibited under subsection (a), (b), (c), or (e) of this section—
        a. to observe the terms of a bona fide seniority system that is not intended to evade the purposes of this chapter, except that no such seniority system shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title because of the age of such individual; or
        b. to observe the terms of a bona fide employee benefit plan-
           i. where, for each benefit or benefit package, the actual amount of payment made or cost incurred on behalf of an older worker is no less than that made or incurred on behalf of a younger

worker, as permissible under section 1625.10, title 29, Code of Federal Regulations (as in effect on June 22, 1989); or

ii. that is a voluntary early retirement incentive plan consistent with the relevant purpose or purposes of this chapter.

- Notwithstanding clause (i) or (ii) of subparagraph (B), no such employee benefit plan or voluntary early retirement incentive plan shall excuse the failure to hire any individual, and no such employee benefit plan shall require or permit the involuntary retirement of any individual specified by section 631(a) of this title, because of the age of such individual. An employer, employment agency, or labor organization acting under subparagraph (A), or under clause (i) or (ii) of subparagraph (B), shall have the burden of proving that such actions are lawful in any civil enforcement proceeding brought under this chapter; or
    1. to discharge or otherwise discipline an individual for good cause.

[Repealed]

Practices of foreign corporations controlled by American employers; foreign employers not controlled by American employers; factors determining control

0. If an employer controls a corporation whose place of incorporation is in a foreign country, any practice by such corporation prohibited under this section shall be presumed to be such practice by such employer.
1. The prohibitions of this section shall not apply where the employer is a foreign person not controlled by an American employer.
2. For the purpose of this subsection the determination of whether an employer controls a corporation shall be based upon the-
    A. interrelation of operations,
    B. common management,
    C. centralized control of labor relations, and
    D. common ownership or financial control,

of the employer and the corporation.

i. Employee pension benefit plans; cessation or reduction of benefit accrual or of allocation to employee account; distribution of benefits after attainment of normal retirement age; compliance; highly compensated employees
    1. Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—
        A. in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or
        B. in the case of a defined contribution plan, the cessation of allocations to an employee's account, or the reduction of the rate at which amounts are allocated to an employee's account, because of age.
    2. Nothing in this section shall be construed to prohibit an employer, employment agency, or labor organization from observing any provision of an employee pension benefit plan

to the extent that such provision imposes (without regard to age) a limitation on the amount of benefits that the plan provides or a limitation on the number of years of service or years of participation which are taken into account for purposes of determining benefit accrual under the plan.

3. In the case of any employee who, as of the end of any plan year under a defined benefit plan, has attained normal retirement age under such plan—
    A. if distribution of benefits under such plan with respect to such employee has commenced as of the end of such plan year, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of the actuarial equivalent of in-service distribution of benefits, and
    B. if distribution of benefits under such plan with respect to such employee has not commenced as of the end of such year in accordance with section 1056(a)(3) of this title *[section 206(a)(3) of the Employee Retirement Income Security Act of 1974]* and section 401(a)(14)(C) of Title 26 *[the Internal Revenue Code of 1986]*, and the payment of benefits under such plan with respect to such employee is not suspended during such plan year pursuant to section 1053(a)(3)(B) of this title or section 411(a)(3)(B) of Title 26 *[the Internal Revenue Code of 1986]*, then any requirement of this subsection for continued accrual of benefits under such plan with respect to such employee during such plan year shall be treated as satisfied to the extent of any adjustment in the benefit payable under the plan during such plan year attributable to the delay in the distribution of benefits after the attainment of normal retirement age.
4. The provisions of this paragraph shall apply in accordance with regulations of the Secretary of the Treasury. Such regulations shall provide for the application of the preceding provisions of this paragraph to all employee pension benefit plans subject to this subsection and may provide for the application of such provisions, in the case of any such employee, with respect to any period of time within a plan year.
4. Compliance with the requirements of this subsection with respect to an employee pension benefit plan shall constitute compliance with the requirements of this section relating to benefit accrual under such plan.
5. Paragraph (1) shall not apply with respect to any employee who is a highly compensated employee (within the meaning of section 414(q) of Title 26 *[the Internal Revenue Code of 1986]*) to the extent provided in regulations prescribed by the Secretary of the Treasury for purposes of precluding discrimination in favor of highly compensated employees within the meaning of subchapter D of chapter 1 of Title 26 *[the Internal Revenue Code of 1986]*.
6. A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the subsidized portion of any early retirement benefit is disregarded in determining benefit accruals or it is a plan permitted by subsection (m) of this section.
7. Any regulations prescribed by the Secretary of the Treasury pursuant to clause (v) of section 411(b)(1)(H) of Title 26 *[the Internal Revenue Code of 1986]* and subparagraphs (C) and (D), of section 411(b)(2) of Title 26 *[the Internal Revenue Code of 1986]* shall apply with respect to the requirements of this subsection in the same manner and to the same extent as such regulations apply with respect to the requirements of such sections 411(b)(1)(H) and 411(b)(2).

8. A plan shall not be treated as failing to meet the requirements of this section solely because such plan provides a normal retirement age described in section 1002(24)(B) *[section 2(24)(B) of the Employee Retirement Income Security Act of 1974]* of this title and section 411(a)(8)(B) of Title 26 *[the Internal Revenue Code of 1986]*.
9. For purposes of this subsection-
    A. The terms "employee pension benefit plan", "defined benefit plan", "defined contribution plan", and "normal retirement age" have the meanings provided such terms in section 1002 of this title *[section 3 of the Employee Retirement Income Security Act of 1974]*.
    B. The term "compensation" has the meaning provided by section 414(s) of Title 26 *[the Internal Revenue Code of 1986]*.
10. Special rules relating to age
    A. Comparison to similarly situated younger individual
        i. In general—A plan shall not be treated as failing to meet the requirements of paragraph (1) if a participant's accrued benefit, as determined as of any date under the terms of the plan, would be equal to or greater than that of any similarly situated, younger individual who is or could be a participant.
        ii. Similarly situated—For purposes of this subparagraph, a participant is similarly situated to any other individual if such participant is identical to such other individual in every respect (including period of service, compensation, position, date of hire, work history, and any other respect) except for age.
        iii. Disregard of subsidized early retirement benefits—In determining the accrued benefit as of any date for purposes of this clause, the subsidized portion of any early retirement benefit or retirement-type subsidy shall be disregarded.
        iv. Accrued benefit—For purposes of this subparagraph, the accrued benefit may, under the terms of the plan, be expressed as an annuity payable at normal retirement age, the balance of a hypothetical account, or the current value of the accumulated percentage of the employee's final average compensation.
    B. Applicable defined benefit plans
        i. Interest credits
            I. In general—An applicable defined benefit plan shall be treated as failing to meet the requirements of paragraph (1) unless the terms of the plan provide that any interest credit (or an equivalent amount) for any plan year shall be at a rate which is not greater than a market rate of return. A plan shall not be treated as failing to meet the requirements of this subclause merely because the plan provides for a reasonable minimum guaranteed rate of return or for a rate of return that is equal to the greater of a fixed or variable rate of return

II. Preservation of capital—An interest credit (or an equivalent amount) of less than zero shall in no event result in the account balance or similar amount being less than the aggregate amount of contributions credited to the account.

III. Market rate of return—The Secretary of the Treasury may provide by regulation for rules governing the calculation of a market rate of return for purposes of subclause (I) and for permissible methods of crediting interest to the account (including fixed or variable interest rates) resulting in effective rates of return meeting the requirements of subclause (I). In the case of a governmental plan (as defined in the first sentence of section 414(d) of Title 26 *[the Internal Revenue Code of 1986]*, a rate of return or a method of crediting interest established pursuant to any provision of Federal, State, or local law (including any administrative rule or policy adopted in accordance with any such law) shall be treated as a market rate of return for purposes of subclause (I) and a permissible method of crediting interest for purposes of meeting the requirements of subclause (I), except that this sentence shall only apply to a rate of return or method of crediting interest if such rate or method does not violate any other requirement of this chapter.

ii. Special rule for plan conversions—If, after June 29, 2005, an applicable plan amendment is adopted, the plan shall be treated as failing to meet the requirements of paragraph (1)(H) unless the requirements of clause (iii) are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

iii. Rate of benefit accrual—Subject to clause (iv), the requirements of this clause are met with respect to any participant if the accrued benefit of the participant under the terms of the plan as in effect after the amendment is not less than the sum of—

I. the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus

II. the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

iv. Special rules for early retirement subsidies—For purposes of clause (iii)(I), the plan shall credit the accumulation account or similar amount with the amount of any early retirement benefit or retirement-type subsidy for the plan year in which the participant retires if, as of such time, the participant has met the age, years of service, and other requirements under the plan for entitlement to such benefit or subsidy.

v. Applicable plan amendment—For purposes of this subparagraph—

I. In general—The term "applicable plan amendment" means an amendment to a defined benefit plan which has the effect of converting the plan to an applicable defined benefit plan.

II. Special rule for coordinated benefits—If the benefits of 2 or more defined benefit plans established or maintained by an employer are coordinated in such a manner as to have the effect of the adoption of an amendment described in subclause (I), the sponsor of the defined benefit plan or plans providing for such coordination shall be treated as having adopted such a plan amendment as of the date such coordination begins.

III. Multiple amendments—The Secretary of the Treasury shall issue regulations to prevent the avoidance of the purposes of this subparagraph through the use of 2 or more plan amendments rather than a single amendment.

IV. Applicable defined benefit plan—For purposes of this subparagraph, the term "applicable defined benefit plan" has the meaning given such term by section 1053(f)(3) of this title *[section 203(f)(3) of the Employee Retirement Income Security Act of 1974]*.

vi. Termination requirements—An applicable defined benefit plan shall not be treated as meeting the requirements of clause (i) unless the plan provides that, upon the termination of the plan—

I. if the interest credit rate (or an equivalent amount) under the plan is a variable rate, the rate of interest used to determine accrued benefits under the plan shall be equal to the average of the rates of interest used under the plan during the 5-year period ending on the termination date, and

II. the interest rate and mortality table used to determine the amount of any benefit under the plan payable in the form of an annuity payable at normal retirement age shall be the rate and table specified under the plan for such purpose 99as of the termination date, except that if such interest rate is a variable rate, the interest rate shall be determined under the rules of subclause (I).

C. Certain offsets permitted—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides offsets against benefits under the plan to the extent such offsets are allowable in applying the requirements of section 401(a) of Title 26 *[the Internal Revenue Code of 1986]*.

D. Permitted disparities in plan contributions or benefits—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides a disparity in contributions or benefits with respect to which the requirements of section 401(l) of Title 26 *[the Internal Revenue Code of 1986]* are met.

E. Indexing permitted—

i. In general—A plan shall not be treated as failing to meet the requirements of paragraph (1) solely because the plan provides for indexing of accrued benefits under the plan.

ii. Protection against loss—Except in the case of any benefit provided in the form of a variable annuity, clause (i) shall not apply with respect to

any indexing which results in an accrued benefit less than the accrued benefit determined without regard to such indexing.

iii. Indexing—For purposes of this subparagraph, the term "indexing" means, in connection with an accrued benefit, the periodic adjustment of the accrued benefit by means of the application of a recognized investment index or methodology.

F. Early retirement benefit or retirement-type subsidy—For purposes of this paragraph, the terms "early retirement benefit" and "retirement-type subsidy" have the meaning given such terms in section 1053(g)(2)(A) of this title *[section 203(g)(2)(A) of the Employee Retirement Income Security Act of 1974]*.

G. Benefit accrued to date—For purposes of this paragraph, any reference to the accrued benefit shall be a reference to such benefit accrued to date.

j. Employment as firefighter or law enforcement officer

- It shall not be unlawful for an employer which is a State, a political subdivision of a State, an agency or instrumentality of a State or a political subdivision of a State, or an interstate agency to fail or refuse to hire or to discharge any individual because of such individual's age if such action is taken-

4. with respect to the employment of an individual as a firefighter or as a law enforcement officer, the employer has complied with section 3(d)(2) of the Age Discrimination in Employment Amendments of 1996 if the individual was discharged after the date described in such section, and the individual has attained-

A. the age of hiring or retirement, respectively, in effect under applicable State or local law on March 3, 1983; or

B. i. if the individual was not hired, the age of hiring in effect on the date of such failure or refusal to hire under applicable State or local law enacted after September 30, 1996; or

ii. if applicable State or local law was enacted after September 30, 1996, and the individual was discharged, the higher of-

I. the age of retirement in effect on the date of such discharge under such law; and

II. age 55; and

5. pursuant to a bona fide hiring or retirement plan that is not a subterfuge to evade the purposes of this chapter.

j. Seniority system or employee benefit plan; compliance

- A seniority system or employee benefit plan shall comply with this chapter regardless of the date of adoption of such system or plan.

j. Lawful practices; minimum age as condition of eligibility for retirement benefits; deductions from severance pay; reduction of long-term disability benefits

- Notwithstanding clause (i) or (ii) of subsection (f)(2)(B) of this section-

0. A. It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because-

i. an employee pension benefit plan (as defined in section 1002(2) of this title *[section 2(2) of the Employee Retirement Income Security Act of 1974]*)

provides for the attainment of a minimum age as a condition of eligibility for normal or early retirement benefits; or

ii. a defined benefit plan (as defined in section 1002(35) of this title *[section 2(35) of the Employee Retirement Income Security Act]*) provides for-

I. payments that constitute the subsidized portion of an early retirement benefit; or

II. social security supplements for plan participants that commence before the age and terminate at the age (specified by the plan) when participants are eligible to receive reduced or unreduced old-age insurance benefits under title II of the Social Security Act (42 U.S.C. 401 et seq.), and that do not exceed such old-age insurance benefits.

B. A voluntary early retirement incentive plan that—

i. is maintained by—

I. a local educational agency (as defined in section 7801 of Title 20 *[the Elementary and Secondary Education Act of 1965]*, or

II. an education association which principally represents employees of 1 or more agencies described in subclause (I) and which is described in section 501(c) (5) or (6) of Title 26 *[the Internal Revenue Code of 1986]* and exempt from taxation under section 501(a) of Title 26 *[the Internal Revenue Code of 1986]*, and

ii. makes payments or supplements described in subclauses (I) and (II) of subparagraph (A)(ii) in coordination with a defined benefit plan (as so defined) maintained by an eligible employer described in section 457(e)(1)(A) of Title 26 *[the Internal Revenue Code of 1986]* or by an education association described in clause (i)(II),

- shall be treated solely for purposes of subparagraph (A)(ii) as if it were a part of the defined benefit plan with respect to such payments or supplements. Payments or supplements under such a voluntary early retirement incentive plan shall not constitute severance pay for purposes of paragraph (2).

2. A. It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because following a contingent event unrelated to age—

i. the value of any retiree health benefits received by an individual eligible for an immediate pension;

ii. the value of any additional pension benefits that are made available solely as a result of the contingent event unrelated to age and following which the individual is eligible for not less than an immediate and unreduced pension; or

iii. the values described in both clauses (i) and (ii); are deducted from severance pay made available as a result of the contingent event unrelated to age.

B. For an individual who receives immediate pension benefits that are actuarially reduced under subparagraph (A)(i), the amount of the deduction available pursuant to subparagraph (A)(i) shall be reduced by the same percentage as the reduction in the pension benefits.

C. For purposes of this paragraph, severance pay shall include that portion of supplemental unemployment compensation benefits (as described in section 501(c)(17) of Title 26 *[the Internal Revenue Code of 1986]*) that-

i. constitutes additional benefits of up to 52 weeks;
ii. has the primary purpose and effect of continuing benefits until an individual becomes eligible for an immediate and unreduced pension; and
iii. is discontinued once the individual becomes eligible for an immediate and unreduced pension.

D. For purposes of this paragraph and solely in order to make the deduction authorized under this paragraph, the term "retiree health benefits" means benefits provided pursuant to a group health plan covering retirees, for which (determined as of the contingent event unrelated to age)—

i. the package of benefits provided by the employer for the retirees who are below age 65 is at least comparable to benefits provided under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);
ii. the package of benefits provided by the employer for the retirees who are age 65 and above is at least comparable to that offered under a plan that provides a benefit package with one-fourth the value of benefits provided under title XVIII of such Act; or
iii. the package of benefits provided by the employer is as described in clauses (i) and (ii).

E. i. If the obligation of the employer to provide retiree health benefits is of limited duration, the value for each individual shall be calculated at a rate of $3,000 per year for benefit years before age 65, and $750 per year for benefit years beginning at age 65 and above.

ii. If the obligation of the employer to provide retiree health benefits is of unlimited duration, the value for each individual shall be calculated at a rate of $48,000 for individuals below age 65, and $24,000 for individuals age 65 and above.
iii. The values described in clauses (i) and (ii) shall be calculated based on the age of the individual as of the date of the contingent event unrelated to age. The values are effective on October 16, 1990, and shall be adjusted on an annual basis, with respect to a contingent event that occurs subsequent to the first year after October 16, 1990, based on the medical component of the

Consumer Price Index for all-urban consumers published by the Department of Labor.

iv. If an individual is required to pay a premium for retiree health benefits, the value calculated pursuant to this subparagraph shall be reduced by whatever percentage of the overall premium the individual is required to pay.

F. If an employer that has implemented a deduction pursuant to subparagraph (A) fails to fulfill the obligation described in subparagraph (E), any aggrieved individual may bring an action for specific performance of the obligation described in subparagraph (E). The relief shall be in addition to any other remedies provided under Federal or State law.

3. It shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because an employer provides a bona fide employee benefit plan or plans under which long-term disability benefits received by an individual are reduced by any pension benefits (other than those attributable to employee contributions)—
    A. paid to the individual that the individual voluntarily elects to receive; or
    B. for which an individual who has attained the later of age 62 or normal retirement age is eligible.

m. Voluntary retirement incentive plans
    - Notwithstanding subsection (f)(2)(b) of this section, it shall not be a violation of subsection (a), (b), (c), or (e) of this section solely because a plan of an institution of higher education (as defined in section 1001 of Title 20 *[the Higher Education Act of 1965]*) offers employees who are serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure) supplemental benefits upon voluntary retirement that are reduced or eliminated on the basis of age, if—
    - such institution does not implement with respect to such employees any age-based reduction or cessation of benefits that are not such supplemental benefits, except as permitted by other provisions of this chapter;
    - such supplemental benefits are in addition to any retirement or severance benefits which have been offered generally to employees serving under a contract of unlimited tenure (or similar arrangement providing for unlimited tenure), independent of any early retirement or exit-incentive plan, within the preceding 365 days; and
    - any employee who attains the minimum age and satisfies all non-age-based conditions for receiving a benefit under the plan has an opportunity lasting not less than 180 days to elect to retire and to receive the maximum benefit that could then be elected by a younger but otherwise similarly situated employee, and the plan does not require retirement to occur sooner than 180 days after such election.

Study by Secretary of Labor; Reports to President and Congress; Scope of Study; Implementation of Study; Transmittal Date of Reports

SEC. 624. *[Section 5]*

a. 1. The EEOC *[originally, the Secretary of Labor]* is directed to undertake an appropriate study of institutional and other arrangements giving rise to involuntary retirement, and report his findings and any appropriate legislative recommendations to the President and to the Congress. Such study shall include—

A. an examination of the effect of the amendment made by section 3(a) of the Age Discrimination in Employment Act Amendments of 1978 in raising the upper age limitation established by section 631(a) of this title *[section 1(a)]* to 70 years of age;

B. a determination of the feasibility of eliminating such limitation;

C. a determination of the feasibility of raising such limitation above 70 years of age; and

D. an examination of the effect of the exemption contained in section 631(c) of this title *[section 1(c)]*, relating to certain executive employees, and the exemption contained in section 631(d) of this title *[section 1(d)]*, relating to tenured teaching personnel.

2. The EEOC *[originally, the Secretary of Labor]* may undertake the study required by paragraph (1) of this subsection directly or by contract or other arrangement.

b. The report required by subsection (a) of this section shall be transmitted to the President and to the Congress as an interim report not later than January 1, 1981, and in final form not later than January 1, 1982.

Transfer of Functions *[All functions relating to age discrimination administration and enforcement vested by Section 6 in the Secretary of Labor or the Civil Service Commission were transferred to the Equal Employment Opportunity Commission effective January 1, 1979 under the President's Reorganization Plan No. 1.]*

Administration

SEC. 625. *[Section 6]*

The EEOC *[originally, the Secretary of Labor]* shall have the power-

(a) Delegation of functions; appointment of personnel; technical assistance

to make delegations, to appoint such agents and employees, and to pay for technical assistance on a fee for service basis, as he deems necessary to assist him in the performance of his functions under this chapter;

(b) Cooperation with other agencies, employers, labor organizations, and employment agencies

to cooperate with regional, State, local, and other agencies, and to cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this chapter.

Recordkeeping, Investigation, and Enforcement

SEC. 626. *[Section 7]*

a. Attendance of witnesses; investigations, inspections, records, and homework regulations
    - The Equal Employment Opportunity Commission shall have the power to make investigations and require the keeping of records necessary or appropriate for the administration of this chapter in accordance with the powers and procedures provided in sections 209 and 211 of this title *[sections 9 and 11 of the Fair Labor Standards Act of 1938, as amended]*.
b. Enforcement; prohibition of age discrimination under fair labor standards; unpaid minimum wages and unpaid overtime compensation; liquidated damages; judicial relief; conciliation, conference, and persuasion
    - The provisions of this chapter shall be enforced in accordance with the powers, remedies, and procedures provided in sections 211(b), 216 (except for subsection (a) thereof), and 217 of this title *[sections 11(b), 16 (except for subsection (a) thereof), and 17 of the Fair Labor Standards Act of 1938, as amended]*, and subsection (c) of this section. Any act prohibited under section 623 of this title *[section 4]* shall be deemed to be a prohibited act under section 215 of this title *[section 15 of the Fair Labor Standards Act of 1938, as amended]*. Amounts owing to a person as a result of a violation of this chapter shall be deemed to be unpaid minimum wages or unpaid overtime compensation for purposes of sections 216 and 217 of this title *[sections 16 and 17 of the Fair Labor Standards Act of 1938, as amended]*: *Provided,* That liquidated damages shall be payable only in cases of willful violations of this chapter. In any action brought to enforce this chapter the court shall have jurisdiction to grant such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter, including without limitation judgments compelling employment, reinstatement or promotion, or enforcing the liability for amounts deemed to be unpaid minimum wages or unpaid overtime compensation under this section. Before instituting any action under this section, the Equal Employment Opportunity Commission shall attempt to eliminate the discriminatory practice or practices alleged, and to effect voluntary compliance with the requirements of this chapter through informal methods of conciliation, conference, and persuasion.
c. Civil actions; persons aggrieved; jurisdiction; judicial relief; termination of individual action upon commencement of action by Commission; jury trial
    - Any person aggrieved may bring a civil action in any court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter: *Provided,* That the right of any person to bring such action shall terminate upon the commencement of an action by the Equal Employment Opportunity Commission to enforce the right of such employee under this chapter.

- In an action brought under paragraph (1), a person shall be entitled to a trial by jury of any issue of fact in any such action for recovery of amounts owing as a result of a violation of this chapter, regardless of whether equitable relief is sought by any party in such action.

d. 1. Filing of charge with Commission; timeliness; conciliation, conference, and persuasion
   - No civil action may be commenced by an individual under this section until 60 days after a charge alleging unlawful discrimination has been filed with the Equal Employment Opportunity Commission. Such a charge shall be filed-
     A. within 180 days after the alleged unlawful practice occurred; or
     B. in a case to which section 633(b) of this title applies, within 300 days after the alleged unlawful practice occurred, or within 30 days after receipt by the individual of notice of termination of proceedings under State law, whichever is earlier.

2. Upon receiving such a charge, the Commission shall promptly notify all persons named in such charge as prospective defendants in the action and shall promptly seek to eliminate any alleged unlawful practice by informal methods of conciliation, conference, and persuasion.

3. For purposes of this section, an unlawful practice occurs, with respect to discrimination in compensation in violation of this Act, when a discriminatory compensation decision or other practice is adopted, when a person becomes subject to a discriminatory compensation decision or other practice, or when a person is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

e. Reliance on administrative rulings; notice of dismissal or termination; civil action after receipt of notice
   - Section 259 of this title *[section 10 of the Portal to Portal Act of 1947]* shall apply to actions under this chapter. If a charge filed with the Commission under this chapter is dismissed or the proceedings of the Commission are otherwise terminated by the Commission, the Commission shall notify the person aggrieved. A civil action may be brought under this section by a person defined in section 630(a) of this title *[section 11(a)]* against the respondent named in the charge within 90 days after the date of the receipt of such notice.—

f. Waiver
   - An individual may not waive any right or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum—
     A. the waiver is part of an agreement between the individual and the employer that is written in a manner calculated to be understood by such individual, or by the average individual eligible to participate;
     B. the waiver specifically refers to rights or claims arising under this chapter;

C. the individual does not waive rights or claims that may arise after the date the waiver is executed;

D. the individual waives rights or claims only in exchange for consideration in addition to anything of value to which the individual already is entitled;

E. the individual is advised in writing to consult with an attorney prior to executing the agreement;

F. i. the individual is given a period of at least 21 days within which to consider the agreement; or

ii. if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the individual is given a period of at least 45 days within which to consider the agreement;

G. the agreement provides that for a period of at least 7 days following the execution of such agreement, the individual may revoke the agreement, and the agreement shall not become effective or enforceable until the revocation period has expired;

H. if a waiver is requested in connection with an exit incentive or other employment termination program offered to a group or class of employees, the employer (at the commencement of the period specified in subparagraph (F)) informs the individual in writing in a manner calculated to be understood by the average individual eligible to participate, as to—

i. any class, unit, or group of individuals covered by such program, any eligibility factors for such program, and any time limits applicable to such program; and

ii. the job titles and ages of all individuals eligible or selected for the program, and the ages of all individuals in the same job classification or organizational unit who are not eligible or selected for the program.

2. A waiver in settlement of a charge filed with the Equal Employment Opportunity Commission, or an action filed in court by the individual or the individual's representative, alleging age discrimination of a kind prohibited under section 623 or 633a of this title *[section 4 or 15]* may not be considered knowing and voluntary unless at a minimum—

A. subparagraphs (A) through (E) of paragraph (1) have been met; and

B. the individual is given a reasonable period of time within which to consider the settlement agreement.

3. In any dispute that may arise over whether any of the requirements, conditions, and circumstances set forth in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H) of paragraph (1), or subparagraph (A) or (B) of paragraph (2), have been met, the party asserting the validity of a waiver shall have the burden of proving in a court of competent jurisdiction that a waiver was knowing and voluntary pursuant to paragraph (1) or (2).

4. No waiver agreement may affect the Commission's rights and responsibilities to enforce this chapter. No waiver may be used to justify interfering with the protected right of an employee to file a charge or participate in an investigation or proceeding conducted by the Commission.

Notices To Be Posted

SEC. 627. *[Section 8]*

Every employer, employment agency, and labor organization shall post and keep posted in conspicuous places upon its premises a notice to be prepared or approved by the Equal Employment Opportunity Commission setting forth information as the Commission deems appropriate to effectuate the purposes of this chapter.

Rules and Regulations

SEC. 628. *[Section 9]*

In accordance with the provisions of subchapter II of chapter 5 of title 5 *[Administrative Procedures Act, 5 U.S.C. § 551 et seq.]*, the Equal Employment Opportunity Commission may issue such rules and regulations as it may consider necessary or appropriate for carrying out this chapter, and may establish such reasonable exemptions to and from any or all provisions of this chapter as it may find necessary and proper in the public interest.

Criminal Penalties

SEC. 629. *[Section 10]*

Whoever shall forcibly resist, oppose, impede, intimidate or interfere with a duly authorized representative of the Equal Employment Opportunity Commission while it is engaged in the performance of duties under this chapter shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or by both: *Provided, however,* That no person shall be imprisoned under this section except when there has been a prior conviction hereunder.

Definitions

SEC. 630. *[Section 11]*

For the purposes of this chapter-

a. The term "person" means one or more individuals, partnerships, associations, labor organizations, corporations, business trusts, legal representatives, or any organized groups of persons.
b. The term "employer" means a person engaged in an industry affecting commerce who has twenty or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year: *Provided,* That prior to June 30, 1968, employers having fewer than fifty employees shall not be considered employers. The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State and any agency or instrumentality of a State or a political subdivision of a State, and any interstate agency, but

such term does not include the United States, or a corporation wholly owned by the Government of the United States.

c. The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer and includes an agent of such a person; but shall not include an agency of the United States.

d. The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization.

e. A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is fifty or more prior to July 1, 1968, or twenty-five or more on or after July 1, 1968, and such labor organization—

    1. is the certified representative of employees under the provisions of the National Labor Relations Act, as amended *[29 U.S.C. 151 et seq.]*, or the Railway Labor Act, as amended *[45 U.S.C. 151 et seq.]*; or
    2. although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or
    3. has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or
    4. has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or
    5. is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

f. The term "employee" means an individual employed by any employer except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any person chosen by such officer to be on such officer's personal staff, or an appointee on the policymaking level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency, or political subdivision. The term "employee" includes any individual who is a citizen of the United States employed by an employer in a workplace in a foreign country.

1. *[The exclusion from the term "employee" of any person chosen by an elected official "to be on such official's personal staff, or an appointee on the policymaking level or an immediate advisor with respect to the exercise of the constitutional or legal powers of the office," remains in section 11(f). However, the Civil Rights Act of 1991 now provides special procedures for such persons who feel they are victims of age and other types of discrimination prohibited by EEOC-enforced statutes. See section 321 of the Civil Rights Act of 1991.]*

g. The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

h. The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 *[29 U.S.C. 401 et seq.]*.

i. The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act *[43 U.S.C. 1331 et seq.]*.

j. The term "firefighter" means an employee, the duties of whose position are primarily to perform work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

k. The term "law enforcement officer" means an employee, the duties of whose position are primarily the investigation, apprehension, or detention of individuals suspected or convicted of offenses against the criminal laws of a State, including an employee engaged in this activity who is transferred to a supervisory or administrative position. For the purpose of this subsection, "detention" includes the duties of employees assigned to guard individuals incarcerated in any penal institution.

l. The term "compensation, terms, conditions, or privileges of employment" encompasses all employee benefits, including such benefits provided pursuant to a bona fide employee benefit plan.

Age Limits

SEC. 631. *[Section 12]*

a. Individuals of at least 40 years of age
   - The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.

b. Employees or applicants for employment in Federal Government
   - In the case of any personnel action affecting employees or applicants for employment which is subject to the provisions of section 633a of this title *[section 15]*, the prohibitions established in section 633a of this title *[section 15]* shall be limited to individuals who are at least 40 years of age.

c. Bona fide executives or high policymakers

- Nothing in this chapter shall be construed to prohibit compulsory retirement of any employee who has attained 65 years of age and who, for the 2-year period immediately before retirement, is employed in a bona fide executive or a high policymaking position, if such employee is entitled to an immediate non-forfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of such plans, of the employer of such employee, which equals, in the aggregate, at least $44,000.
- In applying the retirement benefit test of paragraph (1) of this subsection, if any such retirement benefit is in a form other than a straight life annuity (with no ancillary benefits), or if employees contribute to any such plan or make rollover contributions, such benefit shall be adjusted in accordance with regulations prescribed by the Equal Employment Opportunity Commission, after consultation with the Secretary of the Treasury, so that the benefit is the equivalent of a straight life annuity (with no ancillary benefits) under a plan to which employees do not contribute and under which no rollover contributions are made.

Annual Report

SEC. 632. *[Section 13]*

[Repealed]

Federal-State Relationship

SEC. 633. *[Section 14]*

a. Federal action superseding State action
   - Nothing in this chapter shall affect the jurisdiction of any agency of any State performing like functions with regard to discriminatory employment practices on account of age except that upon commencement of action under this chapter such action shall supersede any State action.

b. Limitation of Federal action upon commencement of State proceedings
   - In the case of an alleged unlawful practice occurring in a State which has a law prohibiting discrimination in employment because of age and establishing or authorizing a State authority to grant or seek relief from such discriminatory practice, no suit may be brought under section 626 of this title *[section 7]* before the expiration of sixty days after proceedings have been commenced under the State law, unless such proceedings have been earlier terminated: *Provided*, That such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State law. If any requirement for the commencement of such proceedings is imposed by a State authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State authority.

Non-discrimination on Account of Age in Federal Government Employment

SEC. 633a. *[Section 15]*

a. Federal agencies affected
    - All personnel actions affecting employees or applicants for employment who are at least 40 years of age (except personnel actions with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5 *[5 U.S.C. § 102]*, in executive agencies as defined in section 105 of Title 5 *[5 U.S.C. § 105]* (including employees and applicants for employment who are paid from non-appropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units in the government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on age.

b. Enforcement by Equal Employment Opportunity Commission and by Librarian of Congress in the Library of Congress; remedies; rules, regulations, orders, and instructions of Commission: compliance by Federal agencies; powers and duties of Commission; notification of final action on complaint of discrimination; exemptions: bona fide occupational qualification
    - Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission is authorized to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without backpay, as will effectuate the policies of this section. The Equal Employment Opportunity Commission shall issue such rules, regulations, orders, and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission shall-
    - be responsible for the review and evaluation of the operation of all agency programs designed to carry out the policy of this section, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each department, agency, or unit referred to in subsection (a) of this section;
    - consult with and solicit the recommendations of interested individuals, groups, and organizations relating to nondiscrimination in employment on account of age; and
    - provide for the acceptance and processing of complaints of discrimination in Federal employment on account of age.
    - The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions of the Equal Employment Opportunity Commission which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. Reasonable exemptions to the provisions of this section may be established by the Commission but only when the Commission has established a maximum age requirement on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. With respect to

employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission shall be exercised by the Librarian of Congress.

c. Civil actions; jurisdiction; relief
    - Any person aggrieved may bring a civil action in any Federal district court of competent jurisdiction for such legal or equitable relief as will effectuate the purposes of this chapter.

d. Notice to Commission; time of notice; Commission notification of prospective defendants; Commission elimination of unlawful practices
    - When the individual has not filed a complaint concerning age discrimination with the Commission, no civil action may be commenced by any individual under this section until the individual has given the Commission not less than thirty days' notice of an intent to file such action. Such notice shall be filed within one hundred and eighty days after the alleged unlawful practice occurred. Upon receiving a notice of intent to sue, the Commission shall promptly notify all persons named therein as prospective defendants in the action and take any appropriate action to assure the elimination of any unlawful practice.

e. Duty of Government agency or official
    - Nothing contained in this section shall relieve any Government agency or official of the responsibility to assure nondiscrimination on account of age in employment as required under any provision of Federal law.

f. Applicability of statutory provisions to personnel action of Federal departments, etc.
    - Any personnel action of any department, agency, or other entity referred to in subsection (a) of this section shall not be subject to, or affected by, any provision of this chapter, other than the provisions of sections 7(d)(3) and 631(b) of this title *[section 12(b)]* and the provisions of this section.

g. Study and report to President and Congress by Equal Employment Opportunity Commission; scope
    - The Equal Employment Opportunity Commission shall undertake a study relating to the effects of the amendments made to this section by the Age Discrimination in Employment Act Amendments of 1978, and the effects of section 631(b) of this title *[section 12(b)]*.
    - The Equal Employment Opportunity Commission shall transmit a report to the President and to the Congress containing the findings of the Commission resulting from the study of the Commission under paragraph (1) of this subsection. Such report shall be transmitted no later than January 1, 1980.

Effective Date

[Section 16 of the ADEA (not reproduced in the U.S. Code)]

This Act shall become effective one hundred and eighty days after enactment, except (a) that the Secretary of Labor may extend the delay in effective date of any provision of this Act up to an additional ninety days thereafter if he finds that such time is necessary in permitting adjustments to the provisions hereof, and (b) that on or after the date of enactment the EEOC [originally, the

Secretary of Labor] is authorized to issue such rules and regulations as may be necessary to carry out its provisions.

Authorization of Appropriations

SEC. 634. *[Section 17]*

There are hereby authorized to be appropriated such sums as may be necessary to carry out this chapter.

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11.4: Aging and the Elderly

- 11.4.1: Introduction
- 11.4.2: Who Are the Elderly? Aging in Society
- 11.4.3: The Process of Aging
- 11.4.4: Challenges Facing the Elderly
- 11.4.5: Theoretical Perspectives on Aging
- 11.4.6: Key Terms
- 11.4.7: Section Summary

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11.4.1: Introduction

Figure 11.4.1.1: Older people, especially family members, can foster a connection between our past and present and help build our memories and identities. But they sometimes need unexpected help, which they do not always accept. (Credit: PWRDF/flickr)

9-year old twins Osiris and Joli loved making meals with Bibi, their grandmother. Osiris loved the cooking; Joli loved stealing the ingredients. The kids didn't get very involved with the chicken, but perked up with the fufu and almost took over the dough balls. Bibi yelled at Joli to stop eating raw batter, but she didn't mean it.

Bibi loved having them around. She sang mash-ups of 90s songs and big band music, mixing in funny mentions of their day-to-day lives. As she prepped the cassava, she'd throw the discarded pieces in a waste bowl like she was playing basketball. Bibi told them a story about how one of her schoolteachers was was so young that all the students thought she was one of them. “So when she told us her last name, I thought it was her first name and called her by it. So she sent me outside for punishment!”

The kids burst into peals of laughter. Bibi joined in as she moved a pan.

Suddenly the stove erupted in flame. The oil in the pan had spilled over. Bibi grabbed a glass of water on the table. Joli screamed at her to stop, but Bibi had already thrown the water onto the oil. The flames flared and splattered across the stove and onto the counter. A paper towel caught fire. Everyone was screaming. Osiris and Joli's mother, Gloria, was in the room a moment later. Pushing Bibi away, she turned off the stove and threw a towel on some of the flames. She took a fire extinguisher from the cabinet and, after a few seconds of fiddling with the pin and hose, emptied it onto the fire.

“Mom!” Gloria yelled. “Why would you put water on an oil fire? You know that's the last thing to do!”

Bibi, in the corner, seemed to hold on to the wall to remain standing. She shook her head and looked at the children. “It's a fire. You put water on it.”

“No you don't. You taught me never to do that. You told me to use salt...anything but water. You could have burned down the house!”

Bibi was crying. She looked at the children and sank toward the floor. “I don't remember that. I'm so sorry. It's a fire, I thought. Put water on it.” Gloria sent the children out of the room and sat her mother down.

Aside from the scare from the fire, why might Bibi be crying? What difficulties do older people face in undertaking day-to-day activities? What difficulties do their family members face? In this chapter, we will explore the identities and issues of older people in our societies, and consider our attitudes and obligations toward them.

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11.4.2: Who Are the Elderly? Aging in Society

Learning Objectives

By the end of this section, you should be able to:

1. Differentiate between the major senior age groups (young-old, middle-old, and old-old)
2. Describe the “graying of the United States” as the population experiences increased life expectancies
3. Examine aging as a global issue

Figure 11.4.2.1: Copy and Paste Caption here. (Copyright; author via source)

Think of U.S. movies and television shows you have watched recently. Did any of them feature older actors and actresses? What roles did they play? How were these older actors portrayed? Were they cast as main characters in a love story? Did they seem fully capable, safe, productive, and happy? Or were they a challenge to those around them? Were they grouchy or overly set in their ways?

Many media portrayals of the elderly reflect negative cultural attitudes toward aging. In the United States, society tends to glorify youth and associate it with beauty and sexuality. In comedies, the elderly are often associated with grumpiness or hostility. Rarely do the roles of older people convey the fullness of life experienced by seniors—as employees, lovers, or the myriad roles they have in real life. What values does this reflect?

One hindrance to society's fuller understanding of aging is that people rarely understand the process of aging until they reach old age themselves. This lack of understanding is in stark contrast to our perspective on childhood, something we've all experienced. And as is often the case with a lack of knowledge or understanding, it leads to myths, assumptions, and stereotypes about elderly people and the aging process. While stereotypes associated with race and gender may lead to more critical thought and sensitivity, many people accept age stereotypes without question (Levy 2002). Consider this: At your school or workplace, you have likely had the opportunity (or may be required) to attend workshops on racial equity, cultural sensitivity, sexual harassment, and so on. But even though the elderly are all around us (and increasing in number every day), very few institutions conduct similar workshops or forums about the elderly. Each culture has a certain set of expectations and assumptions about aging, all of which are part of our socialization.

While the landmarks of maturing into adulthood are a source of pride, often celebrated at major milestones like First Communion, Bar Mitzvah, or Quinceañera, signs of natural aging can be cause for shame or embarrassment. Some people avoid acknowledging their aging by rejecting help when they need it , which can lead to physical injury or problems obtaining needed items or information. For example, when vaccinations for the COVID-19 virus became available, U.S. seniors who didn't have help from family and friends lagged significantly in receiving vaccines; this occurred despite of the fact that seniors were known to be the highest risk group and were the most susceptible to illness and death if they were infected (Graham 2021). Those elderly people who were resistant to reach out for help may have waited too long, and their neighbors or other community members may not have known they needed the help. Why would they take this risk? Researchers aim to uncover the motivations and challenges that may result in these circumstances and behavior.

Gerontology is a field of science that seeks to understand the process of aging and the challenges encountered as seniors grow older. Gerontologists investigate age, aging, and the aged. Gerontologists study what it is like to be an older adult in a society and the ways that aging affects members of a society. As a multidisciplinary field, gerontology includes the work of medical and biological scientists, social scientists, and even financial and economic scholars.

Social gerontology refers to a specialized field of gerontology that examines the social (and sociological) aspects of aging. Researchers focus on developing a broad understanding of the experiences of people at specific ages, such as mental and physical wellbeing, plus age-specific concerns such as the process of dying. Social gerontologists work as social researchers, counselors, community organizers, and service providers for older adults. Because of their specialization, social gerontologists are in a strong position to advocate for older adults.

Scholars in these disciplines have learned that "aging" reflects not only the physiological process of growing older but also our attitudes and beliefs about the aging process. You've likely seen online calculators that promise to determine your "real age" as opposed to your chronological age. These ads target the notion that people may "feel" a different age than their actual years. Some sixty-year-olds feel frail and elderly, while some eighty-year-olds feel sprightly.

Equally revealing is that as people grow older they define “old age” in terms of greater years than their current age (Logan 1992). Many people want to postpone old age and regard it as a phase that will never arrive. For example, many older Americans keep working well past what people consider retirement age, due to financial pressures or in order to remain, in their eyes, useful. Some older adults even succumb to stereotyping their own age group (Rothbaum 1983).

In the United States, the experience of being elderly has changed greatly over the past century. In the late 1800s and early 1900s, many U.S. households were home to multigenerational families, and the experiences and wisdom of elders was respected. They offered wisdom and support to their children and often helped raise their grandchildren (Sweetser 1984).

Multigenerational U.S. families began to decline after World War II, and their numbers reached a low point around 1980, but they are consistently on the rise. A 2010 Pew Research Center analysis of census data found that 49 million people in the United States lived in a family household with at least two adult generations—or a grandparent and at least one other generation a record at the time. By 2016, that number had grown to 64 million people living in multigenerational households, roughly 20 percent of the population (Cohn 2018).

Attitudes toward the elderly have also been affected by large societal changes that have happened over the past 100 years. Researchers believe industrialization and modernization have contributed greatly to lowering the power, influence, and prestige the elderly once held. On the other hand, the sheer numbers of elderly people in certain societies can have other effects, such as older people's influence on policies and politics based on their voting influence.

The elderly have both benefited and suffered from these rapid social changes. In modern societies, a strong economy created new levels of prosperity for many people. Healthcare has become more widely accessible, and medicine has advanced, which allows the elderly to live longer. However, older people are not as essential to the economic survival of their families and communities as they were in the past.

Studying Aging Populations

Figure 11.4.2.2: How old are these people? In modern U.S. society, appearance is not a reliable indicator of age. In addition to genetic

differences, health habits, hair dyes, and attitudes make traditional signs of aging increasingly unreliable. (Credit: Jason Hargrove/flickr)

Since its creation in 1790, the U.S. Census Bureau has been tracking age in the population. Age is an important factor to analyze with accompanying demographic figures, such as income and health. The population chart below shows projected age distribution patterns for the next several decades.

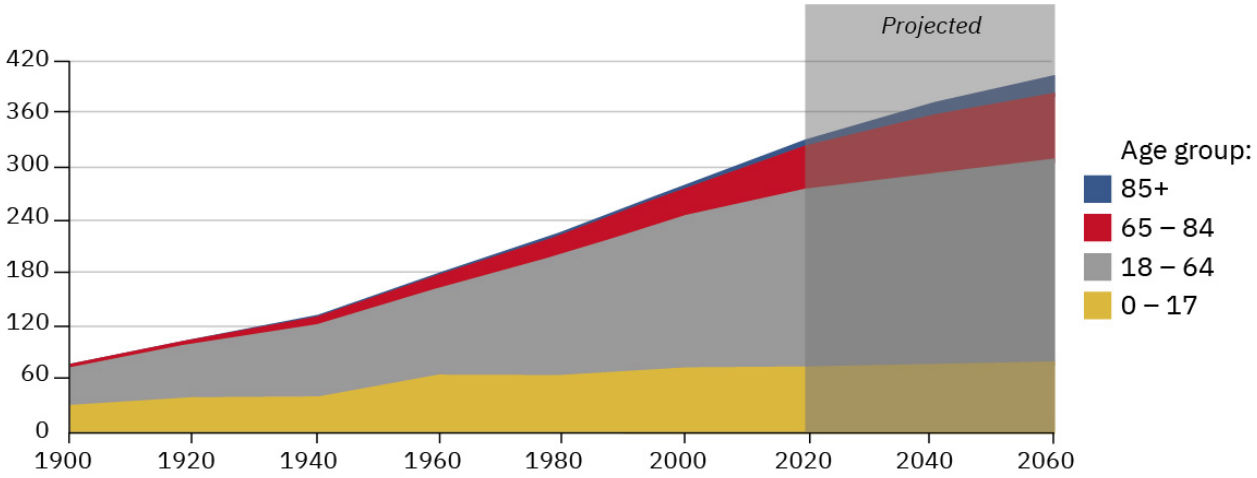

Figure 11.4.2.3: This population chart shows the population size of people in different age groups. The youngest age group, at the bottom, remains largely static. The 18-64 age group has been growing and will continue to do so. But most notable is the increasing size of the third tier (orange) representing ages 65-84. As the chapter discusses, this group is growing significantly, shown by the increasing share of the overall graph it takes up. Also of note is the group at the very top, which is also growing in size. (For comparison, can you even detect the line representing 85+ on the left side of the graph, closer to the year 1900?) (Credit: US Census Bureau.)

Statisticians use data to calculate the median age of a population, that is, the number that marks the halfway point in a group's age range. In the United States, the median age is about forty (U.S. Census Bureau 2010). That means that about half of the people in the United States are under forty and about half are over forty. This median age has been increasing, which indicates the population as a whole is growing older.

A **cohort** is a group of people who share a statistical or demographic trait. People belonging to the same age cohort were born in the same time frame. Understanding a population's age composition can point to certain social and cultural factors and help governments and societies plan for future social and economic challenges.

Sociological studies on aging might help explain the difference between Native American age cohorts and the general population. While Native American societies have a strong tradition of revering their elders, they also have a lower life expectancy because of lack of access to healthcare and high levels of mercury in fish, which is a traditional part of their diet.

Phases of Aging: The Young-Old, Middle-Old, and Old-Old

In the United States, all people over eighteen years old are considered adults, but there is a large difference between a person who is twenty-one years old and a person who is forty-five years old. More specific breakdowns, such as "young adult" and "middle-aged adult," are helpful. In the same way, groupings are helpful in understanding the elderly. The elderly are often lumped together to include everyone over the age of sixty-five. But a sixty-five-year-old's experience of life is much different from a ninety-year-old's.

The United States' older adult population can be divided into three life-stage subgroups: the young-old (approximately sixty-five to seventy-four years old), the middle-old (ages seventy-five to eighty-four years old), and the old-old (over age eighty-five). Today's young-old age group is generally happier, healthier, and financially better off than the young-old of previous generations. In the United States, people are better able to prepare for aging because resources are more widely available.

Also, many people are making proactive quality-of-life decisions about their old age while they are still young. In the past, family members made care decisions when an elderly person reached a health crisis, often leaving the elderly person with little choice about what would happen. The elderly are now able to choose housing, for example, that allows them some independence while still providing care when it is needed. Living wills, retirement planning, and medical power of attorney are other concerns that are increasingly handled in advance.

The Graying of the United States

Figure 11.4.2.4: Senior citizens are an important political constituency, and they may use their age to their advantage. Originating in Canada in the late 1980s, groups of Raging Grannies have protested nuclear weapons, the Iraq War, pesticides, genetically modified foods, and racial injustice. (Credit: Brave New Films/flickr)

What does it mean to be elderly? Some define it as an issue of physical health, while others simply define it by chronological age. The U.S. government, for example, typically classifies people aged sixty-five years old as elderly, at which point citizens are eligible for federal benefits such as Social Security and Medicare. The World Health Organization has no standard, other than noting that sixty-five years old is the commonly accepted definition in most core nations, but it suggests a cut-off somewhere between fifty and fifty-five years old for semi-peripheral nations, such as those in Africa (World Health Organization 2012). AARP (formerly the American Association of Retired Persons) cites fifty as the eligible age of membership. It is interesting to note AARP's name change; by taking the word "retired" out of its name, the organization can broaden its base to any older people in the United States, not just retirees. This is especially important now that many people are working to age seventy and beyond.

There is an element of social construction, both local and global, in the way individuals and nations define who is elderly; that is, the shared meaning of the concept of elderly is created through interactions among people in society. As the table demonstrates, different generations have varying perspectives on aging. Researchers asked questions about the ages at which people reach certain milestones or new categories in life. Members of the Baby Boom generation indicate that a person is officially "old" when they turn 73 years old. Millennials, a much younger group, felt that people became old when they turned 59. The same survey asked questions about the end of youth and the prime of life (Emling 2017). Interestingly, Boomers and GenXers both felt that youth "ended" by age 31 and that the prime of life didn't start until many years later. Millennials felt that people reached the prime of life at age 36, *before* youth ended at age 40. It's worth noting that at the time of the survey, the Millennials were all 36 and younger.

A survey conducted by the U.S. Trust gathered opinion data on the aging milestones and categories. Boomers, Gen X people, and Millennials had generally different views.

	Boomer response	Gen X response	Millennial response
At what age does youth end?	31	31	40
At what age is the prime of life?	50	47	36
At what age is someone old?	73	65	59

Demographically, the U.S. population has undergone a massive shift both in the overall population of elderly people and their share of the total population. Both are significant and impactful on major policy decisions and day-to-day life. In 1900, the population of U.S people over sixty-five years old was 3 million, representing about 4 percent of the total population. That

number increased to 33 million in 1994, and was roughly 12 percent of the total population (Hobbs 1994). By 2016 that number had grown to 49 million, about 15 percent of the total population (U.S. Census Bureau 2018). This is a greater than tenfold increase in the elderly population, compared to a mere tripling of both the total population and of the population under sixty-five years old (Hobbs 1994). This increase has been called "the graying of America," a term that describes the phenomenon of a larger and larger percentage of the population getting older and older. There are several reasons why the United States is graying so rapidly. One of these is **life expectancy**: the average number of years a person born today may expect to live. When we review Census Bureau statistics grouping the elderly by age, it is clear that in the United States, at least, we are living longer. In 2010, there were about 80,000 centenarians in the United States alone. They make up one of the fastest-growing segments of the population (Boston University School of Medicine 2014).

It is interesting to note that not all people in the United States age equally. Most glaring is the difference between men and women; as Figure 11.4.2.5 shows, women have longer life expectancies than men. In 2010, there were ninety sixty-five-year-old men per one hundred sixty-five-year-old women. However, there were only eighty seventy-five-year-old men per one hundred seventy-five-year-old women, and only sixty eighty-five-year-old men per one hundred eighty-five-year-old women. Nevertheless, as the graph shows, the sex ratio actually increased over time, indicating that men are closing the gap between their life spans and those of women (U.S. Census Bureau 2010).

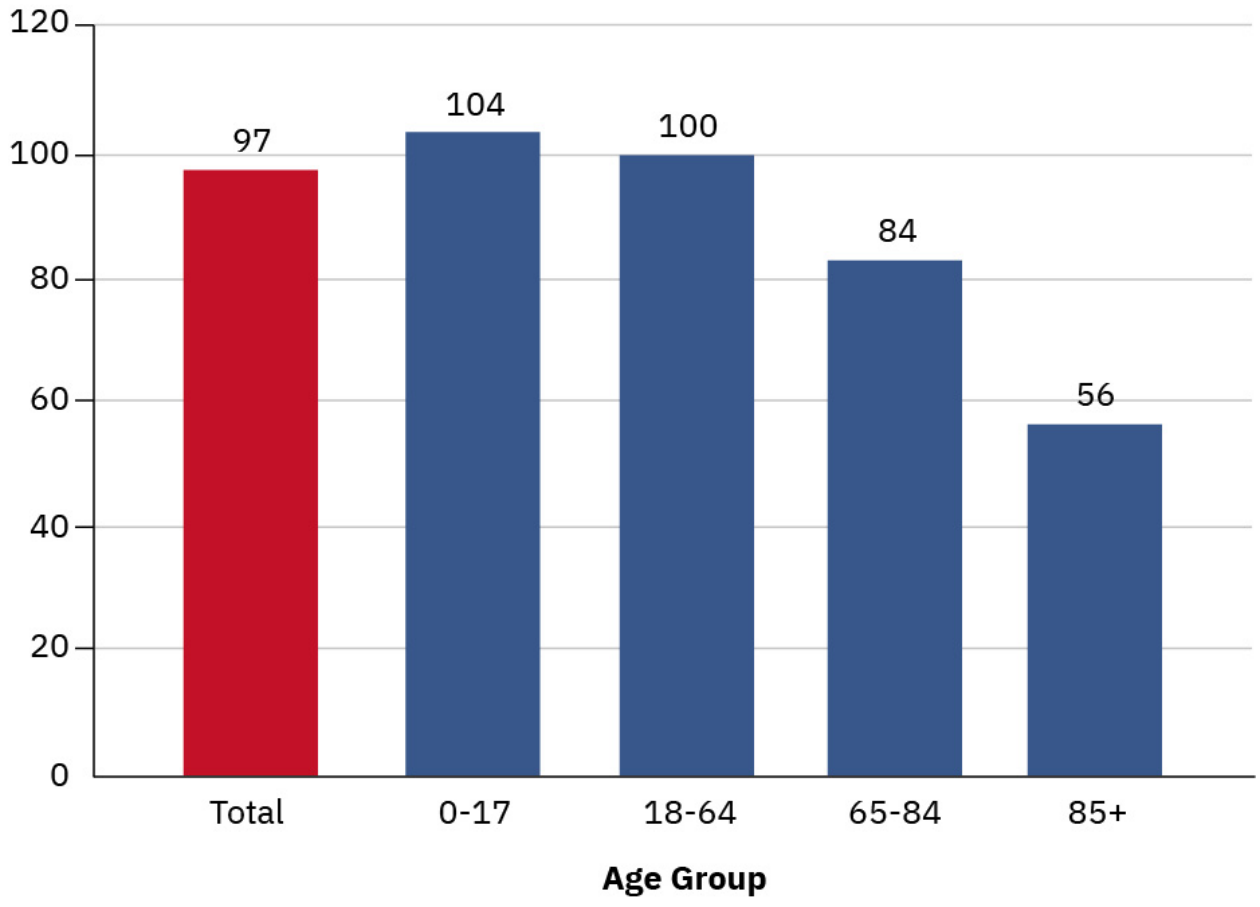

Figure 11.4.2.5: This U.S. Census graph shows the number of males per 100 females. However, over the past two decades, men have narrowed the percentage by which women outlive them. (Credit: the U.S. Census Bureau)

Baby Boomers

Of particular interest to gerontologists today is the population of **Baby Boomers**, the cohort born between 1946 and 1964 and now reaching their 60s and 70s. Coming of age in the 1960s and early 1970s, the baby boom generation was the first group of children and teenagers with their own spending power and therefore their own marketing power (Macunovich 2000). As this group has aged, it has redefined what it means to be young, middle-aged, and now old. People in the Boomer generation do not want to grow old the way their grandparents did; the result is a wide range of products designed to ward off the effects—or the signs—of aging. Previous generations of people over sixty-five were "old." Baby Boomers are in "later life" or "the third age" (Gilleard and Higgs 2007).

The baby boom generation is the cohort driving much of the dramatic increase in the over-sixty-five population. Figure 11.4.2.6 shows a comparison of the U.S. population by age and gender between 2000 and 2010. The biggest bulge in the pyramid (representing the largest population group) moves up the pyramid over the course of the decade; in 2000, the largest population group was age thirty-five to fifty-five. In 2010, that group was age forty-five to sixty-five, meaning the oldest baby Boomers were just reaching the age at which the U.S. Census considers them elderly. By 2030, all Baby Boomers will be age 65 and older, and represent the largest group of elderly people.

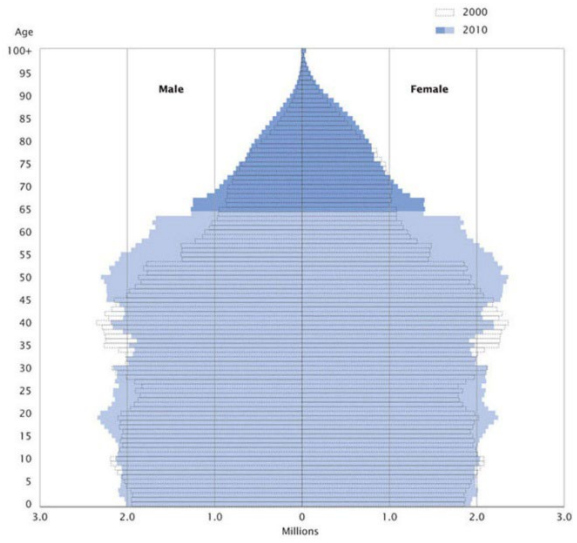

Figure 11.4.2.6: Population by Age and Sex: 2000 and 2010. In this U.S. Census pyramid chart, the baby boom bulge was aged thirty-five to fifty-five in 2000. In 2020, they were aged fifty-five to seventy-five. (Credit: the U.S. Census Bureau)

This aging of the Baby Boom cohort has serious implications for our society. Healthcare is one of the areas most impacted by this trend. According to the U.S. Department of Health and Human Services, healthcare spending is projected to grow by 5.5 percent each year from now until 2027. The portion of government spending on Medicare (a program in which the government covers some costs of healthcare for the elderly) is expected to increase from 3 percent of gross domestic product (GDP) in 2009 to 8 percent of GDP in 2030, and to 15 percent in 2080 (CMS 2018).

Certainly, as Boomers age, they will put increasing burdens on the entire U.S. healthcare system. The American Geriatrics Society notes that from 2013-2025, there will be a 45 percent increase in demand for physicians who specialize in geriatrics. As a result, over 33,000 specialists will be needed to fill the healthcare needs in 2025. And in 2020, there were only 6,320 such specialists in the United States (AGS 2021).

Unlike the elderly of previous generations, Boomers do not expect that turning sixty-five means their active lives are over. They are not willing to abandon work or leisure activities, but they may need more medical support to keep living vigorous lives. This desire of a large group of over-sixty-five-year-olds wanting to continue with a high activity level is driving innovation in the medical industry (Shaw n.d.).

The economic impact of aging Boomers is also an area of concern for many observers. Although the baby boom generation earned more than previous generations and enjoyed a higher standard of living, they did not adequately prepare for retirement. According to most retirement and investment experts, in order to maintain their accustomed lifestyle, people need to save ten times their annual income before retiring. (Note: That's income, not salary.) So if a person has an income of $60,000 per year, they should have saved $600,000. If they made $100,000 per year, they should have saved $1 million. But most Baby Boomers have only saved an estimated $144,000, and only 40 percent have saved more than $250,000 (Gravier 2021). The causes of these shortfalls are varied, and include everything from lavish spending to economic recession to companies folding and reducing pension payments. Higher education costs increased significantly while many Baby Boomers were sending their children to college. No matter what the cause, many retirees report a great deal of stress about running out of money.

Just as some observers are concerned about the possibility of Medicare being overburdened, Social Security is considered to be at risk. Social Security is a government-run retirement program funded primarily through payroll taxes. With enough people paying into the program, there should be enough money for retirees to take out. But with the aging Boomer cohort starting to receive Social Security benefits and fewer workers paying into the Social Security trust fund, economists warn that the system will collapse by the year 2037. A similar warning came in the 1980s; in response to recommendations from the Greenspan Commission, the retirement age (the age at which people could start receiving Social Security benefits) was raised from sixty-two to sixty-seven and the payroll tax was increased. A similar hike in retirement age, perhaps to seventy, is a possible solution to the current threat to Social Security.

Aging around the World

Figure 11.4.2.7: Cultural values and attitudes can shape people's experience of aging. (Credit: Tom Coppen/flickr)

The United States is certainly not alone regarding its aging population; in fact, it doesn't even have the fastest-growing group of elderly people. In 2019, the world had 703 million people aged 65 years or over. By 2050, that number is projected to double to 1.5 billion. One in six people in the world will be 65 or over (United Nations 2020).

This percentage is expected to increase and will have a huge impact on the **dependency ratio**: the number of citizens not in the labor force (young, disabled, or elderly) to citizens in the labor force (Bartram and Roe 2005). One country that will soon face a serious aging crisis is China, which is on the cusp of an "aging boom"— a period when its elderly population will dramatically increase. The number of people above age sixty in China today is about 178 million, which amounts to 13.3 percent of its total population (Xuequan 2011). By 2050, nearly a third of the Chinese population will be age sixty or older, which will put a significant burden on the labor force and impact China's economic growth (Bannister, Bloom, and Rosenberg 2010). On a more global scale, the dependency ratio is projected to more than double in Eastern and South-Eastern Asia, Latin America and the Caribbean, Northern Africa and Western Asia, and Central and Southern Asia.

As healthcare improves and life expectancy increases across the world, elder care will be an emerging issue. Wienclaw (2009) suggests that with fewer working-age citizens available to provide home care and long-term assisted care to the elderly, the costs of eldercare will increase.

Worldwide, the expectation governing the amount and type of elder care varies from culture to culture. For example, in Asia, the responsibility for elder care lies firmly on the family (Yap, Thang, and Traphagan 2005). This is different from the approach in most Western countries, where the elderly are considered independent and are expected to tend to their own care. It is not uncommon for family members to intervene only if the elderly relative requires assistance, often due to poor health. Even then, caring for the elderly is considered voluntary. In the United States, decisions to care for an elderly relative are often conditionally based on the promise of future returns, such as inheritance or, in some cases, the amount of support the elderly provided to the caregiver in the past (Hashimoto 1996).

These differences are based on cultural attitudes toward aging. In China, several studies have noted the attitude of **filial piety** (deference and respect to one's parents and ancestors in all things) as defining all other virtues (Hsu 1971; Hamilton 1990). Cultural attitudes in Japan prior to approximately 1986 supported the idea that the elderly deserve assistance (Ogawa and Retherford 1993). However, seismic shifts in major social institutions (like family and economy) have created an increased demand for community and government care. For example, the increase in women working outside the home has made it more difficult to provide in-home care to aging parents, which leads to an increase in the need for government-supported institutions (Raikhola and Kuroki 2009).

In the United States, by contrast, many people view caring for the elderly as a burden. Even when there is a family member able and willing to provide for an elderly family member, 60 percent of family caregivers are employed outside the home and are unable to provide the needed support. At the same time, however, many middle-class families are unable to bear the financial burden of "outsourcing" professional healthcare, resulting in gaps in care (Bookman and Kimbrel 2011). It is important to note that even within the United States, not all demographic groups treat aging the same way. While most people in the United States are reluctant to place their elderly members into out-of-home assisted care, demographically speaking, the groups least likely to do so are Latinos, African Americans, and Asians (Bookman and Kimbrel 2011).

Globally, the United States and other core nations are fairly well equipped to handle the demands of an exponentially increasing elderly population. However, peripheral and semi-peripheral nations face similar increases without comparable resources. Poverty among elders is a concern, especially among elderly women. The feminization of the aging poor, evident in peripheral nations, is directly due to the number of elderly women in those countries who are single, illiterate, and not a part of the labor force (Mujahid 2006).

In 2002, the Second World Assembly on Aging was held in Madrid, Spain, resulting in the Madrid Plan, an internationally coordinated effort to create comprehensive social policies to address the needs of the worldwide aging population. The plan identifies three themes to guide international policy on aging: 1) publicly acknowledging the global challenges caused by, and

the global opportunities created by, a rising global population; 2) empowering the elderly; and 3) linking international policies on aging to international policies on development (Zelenev 2008).

The Madrid Plan has not yet been successful in achieving all its aims. However, it has increased awareness of the various issues associated with a global aging population, as well as raising the international consciousness to the way that the factors influencing the vulnerability of the elderly (social exclusion, prejudice and discrimination, and a lack of socio-legal protection) overlap with other developmental issues (basic human rights, empowerment, and participation), leading to an increase in legal protections (Zelenev 2008).

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11.4.3: The Process of Aging

Learning Objectives

By the end of this section, you should be able to:

1. Explain the biological, social, and psychological changes that occur in aging
2. Describe the birth of the field of geriatrics
3. Examine attitudes toward death and dying and how they affect the elderly
4. Name the five stages of grief developed by Dr. Elisabeth Kübler-Ross

As human beings grow older, they go through different phases or stages of life. It is helpful to understand aging in the context of these phases. A **life course** is the period from birth to death, including a sequence of predictable life events such as physical maturation. Each phase comes with different responsibilities and expectations, which of course vary by individual and culture. Children love to play and learn, looking forward to becoming preteens. As preteens begin to test their independence, they are eager to become teenagers. Teenagers anticipate the promises and challenges of adulthood. Adults become focused on creating families, building careers, and experiencing the world as independent people. Finally, many adults look forward to old age as a wonderful time to enjoy life without as much pressure from work and family life. In old age, grandparenthood can provide many of the joys of parenthood without all the hard work that parenthood entails. And as work responsibilities abate, old age may be a time to explore hobbies and activities that there was no time for earlier in life. But for other people, old age is not a phase that they look forward to. Some people fear old age and do anything to "avoid" it by seeking medical and cosmetic fixes for the natural effects of age. These differing views on the life course are the result of the cultural values and norms into which people are socialized, but in most cultures, age is a master status influencing self-concept, as well as social roles and interactions.

Through the phases of the life course, dependence and independence levels change. At birth, newborns are dependent on caregivers for everything. As babies become toddlers and toddlers become adolescents and then teenagers, they assert their independence more and more. Gradually, children come to be considered adults, responsible for their own lives, although the point at which this occurs is widely varied among individuals, families, and cultures.

As Riley (1978) notes, aging is a lifelong process and entails maturation and change on physical, psychological, and social levels. Age, much like race, class, and gender, is a hierarchy in which some categories are more highly valued than others. For example, while many children look forward to gaining independence, Packer and Chasteen (2006) suggest that even in children, age prejudice leads to a negative view of aging. This, in turn, can lead to a widespread segregation between the old and the young at the institutional, societal, and cultural levels (Hagestad and Uhlenberg 2006).

SOCIOLOGICAL RESEARCH

Dr. Ignatz Nascher and the Birth of Geriatrics

In the early 1900s, a New York physician named Dr. Ignatz Nascher coined the term **geriatrics**, a medical specialty that focuses on the elderly. He created the word by combining two Greek words: *geron* (old man) and *iatrikos* (medical treatment). Nascher based his work on what he observed as a young medical student, when he saw many acutely ill elderly people who were diagnosed simply as "being old." There was nothing medicine could do, his professors declared, about the syndrome of "old age."

Nascher refused to accept this dismissive view, seeing it as medical neglect. He believed it was a doctor's duty to prolong life and relieve suffering whenever possible. In 1914, he published his views in his book *Geriatrics: The Diseases of Old Age and Their Treatment* (Clarfield 1990). Nascher saw the practice of caring for the elderly as separate from the practice of caring for the young, just as pediatrics (caring for children) is different from caring for grown adults (Clarfield 1990).

Nascher had high hopes for his pioneering work. He wanted to treat the aging, especially those who were poor and had no one to care for them. Many of the elderly poor were sent to live in "almshouses," or public old-age homes (Cole 1993). Conditions were often terrible in these almshouses, where the aging were often sent and just forgotten.

As hard as it might be to believe today, Nascher's approach was once considered unique. At the time of his death, in 1944, he was disappointed that the field of geriatrics had not made greater strides. In what ways are the elderly better off today than they were before Nascher's ideas gained acceptance?

Biological Changes

Figure 11.4.3.1: Aging can be a visible, public experience. Canes, scooters, and other necessities are recognized signs of aging. Because of the meanings that culture assigns to these changes, people believe that being older means being in physical decline. Many older people, however, remain healthy, active, and happy. (Credit: Phil Dolby/flickr)

Each person experiences age-related changes based on many factors. Biological factors, such as molecular and cellular changes, are called **primary aging**, while aging that occurs due to controllable factors, such as lack of physical exercise and poor diet, is called **secondary aging** (Whitbourne and Whitbourne 2010).

Most people begin to see signs of aging after fifty years old, when they notice the physical markers of age. Skin becomes thinner, drier, and less elastic. Wrinkles form. Hair begins to thin and gray. Men prone to balding start losing hair. The difficulty or relative ease with which people adapt to these changes is dependent in part on the meaning given to aging by their particular culture. A culture that values youthfulness and beauty above all else leads to a negative perception of growing old. Conversely, a culture that reveres the elderly for their life experience and wisdom contributes to a more positive perception of what it means to grow old.

The effects of aging can feel daunting, and sometimes the fear of physical changes (like declining energy, food sensitivity, and loss of hearing and vision) is more challenging to deal with than the changes themselves. The way people perceive physical aging is largely dependent on how they were socialized. If people can accept the changes in their bodies as a natural process of aging, the changes will not seem as frightening.

According to the federal Administration on Aging (2011), in 2009 fewer people over sixty-five years old assessed their health as "excellent" or "very good" (41.6 percent) compared to those aged eighteen to sixty-four (64.4 percent). Evaluating data from the National Center for Health Statistics and the U.S. Bureau of Labor Statistics, the Administration on Aging found that from 2006 to 2008, the most frequently reported health issues for those over sixty-five years old included arthritis (50 percent), hypertension (38 percent), heart disease (32 percent), and cancer (22 percent). About 27 percent of people age sixty and older are considered obese by current medical standards. Parker and Thorslund (2006) found that while the trend is toward steady improvement in most disability measures, there is a concomitant increase in functional impairments (disability) and chronic diseases. At the same time, medical advances have reduced some of the disabling effects of those diseases (Crimmins 2004).

Some impacts of aging are gender-specific. Some of the disadvantages aging women face arise from long-standing social gender roles. For example, Social Security favors men over women, inasmuch as women do not earn Social Security benefits for the unpaid labor they perform (usually at home) as an extension of their gender roles. In the healthcare field, elderly female patients are more likely than elderly men to see their healthcare concerns trivialized (Sharp 1995) and are more likely to have their health issues labeled psychosomatic (Munch 2004). Another female-specific aspect of aging is that mass-media outlets often depict elderly females in terms of negative stereotypes and as less successful than older men (Bazzini and Mclntosh I997).

For men, the process of aging—and society's response to and support of the experience—may be quite different. The gradual decrease in male sexual performance that occurs as a result of primary aging is medicalized and constructed as needing treatment (Marshall and Katz 2002) so that a man may maintain a sense of youthful masculinity. On the other hand, aging men have fewer opportunities to assert their masculine identities in the company of other men (for example, through sports participation) (Drummond 1998). And some social scientists have

observed that the aging male body is depicted in the Western world as genderless (Spector-Mersel 2006).

Figure 11.4.3.2: Aging is accompanied by a host of biological, social, and psychological changes. Depending on their health, older people can engage in the same activities they always have, or even try new ones. (Credit: Forest Service Alaska Region/flickr)

Social and Psychological Changes

Male or female, growing older means confronting the psychological issues that come with entering the last phase of life. Young people moving into adulthood take on new roles and responsibilities as their lives expand, but an opposite arc can be observed in old age. What are the hallmarks of social and psychological change?

Retirement—the withdrawal from paid work at a certain age—is a relatively recent idea. Up until the late nineteenth century, people worked about sixty hours a week until they were physically incapable of continuing. Following the American Civil War, veterans receiving pensions were able to withdraw from the workforce, and the number of working older men began declining. A second large decline in the number of working men began in the post-World War II era, probably due to the availability of Social Security, and a third large decline in the 1960s and 1970s was probably due to the social support offered by Medicare and the increase in Social Security benefits (Munnell 2011).

In the twenty-first century, most people hope that at some point they will be able to stop working and enjoy the fruits of their labor. But do we look forward to this time or fear it? When people retire from familiar work routines, some easily seek new hobbies, interests, and forms of recreation. Many find new groups and explore new activities, but others may find it more difficult to adapt to new routines and loss of social roles, losing their sense of self-worth in the process.

Each phase of life has challenges that come with the potential for fear. Erik H. Erikson (1902–1994), in his view of socialization, broke the typical lifespan into eight phases. Each phase presents a particular challenge that must be overcome. In the final stage, old age, the challenge is to embrace integrity over despair. Some people are unable to successfully overcome the challenge. They may have to confront regrets, such as being disappointed in their children's lives or perhaps their own. They may have to accept that they will never reach certain career goals. Or they must come to terms with what their career success has cost them, such as time with their family or declining personal health. Others, however, are able to achieve a strong sense of integrity and are able to embrace the new phase in life. When that happens, there is tremendous potential for creativity. They can learn new skills, practice new activities, and peacefully prepare for the end of life.

For some, overcoming despair might entail remarriage after the death of a spouse. A study conducted by Kate Davidson (2002) reviewed demographic data that asserted men were more likely to remarry after the death of a spouse and suggested that widows (the surviving female spouse of a deceased male partner) and widowers (the surviving male spouse of a deceased female partner) experience their postmarital lives differently. Many surviving women enjoyed a new sense of freedom, since they were living alone for the first time. On the other hand, for surviving men, there was a greater sense of having lost something, because they were now deprived of a constant source of care as well as the focus of their emotional life.

Aging and Sexuality

Figure 11.4.3.3: In *Harold and Maude*, a 1971 cult classic movie, a twenty-something young man falls in love with a seventy-nine-year-old woman. The world disapproves. (Credit: luckyjackson/flickr)

Although it is sometimes difficult to have an open, public national dialogue about aging and sexuality, the reality is that our sexual selves do not disappear after age sixty-five. People continue to enjoy sex—and not always safe sex—well into their later years. In fact, some research suggests that as many as one in five new cases of AIDS occurs in adults over sixty-five years old (Hillman 2011).

In some ways, old age may be a time to enjoy sex more, not less. For women, the elder years can bring a sense of relief as the fear of an unwanted pregnancy is removed and the children are grown and taking care of themselves. However, while we have expanded the number of psycho-pharmaceuticals to address sexual dysfunction in men, it was not until recently that the medical field acknowledged the existence of female sexual dysfunctions (Bryant 2004). Additional treatments have been developed or applied to address sexual desire or dysfunction, which sometimes leads members of both sexes to believe that problems are easily resolved. But emotional and social factors play an important role, and medications on their own cannot resolve all issues (Nonacs 2018).

Aging and sexuality also concerns relationships between people of different ages, referred to as age-gap relationships by researchers. These types of relationships are certainly not confined to the elderly, but people often make assumptions about elderly people in romantic relationships with younger people (and vice versa). Research into age-gap relationships indicates that social pressure can have impacts on relationship commitment or lead to breakups. The life stages of the people can also have impacts, especially if one of them is elderly and the other is not (Karantzas 2018). A relationship between a 30-year-old and a 45-year-old most likely involves fewer discussions about serious health issues and retirement decisions than one between a 55-year-old and a 70-year-old. Both have 15-year age gaps, but the circumstances are quite different.

SOCIOLOGY IN THE REAL WORLD

Aging "Out:" LGBTQ Seniors

Figure 11.4.3.4: As same-sex marriage becomes a possibility, many gay and lesbian couples are finally able to tie the knot—sometimes as seniors—after decades of waiting. (Credit: Fibonacci Blue/flickr).

How do different groups in our society experience the aging process? Are there any experiences that are universal, or do different populations have different experiences? An emerging field of study looks at how lesbian, gay, bisexual, transgender, and queer/questioning (LGBTQ) people experience the aging process and how their experience differs from that of other groups or the dominant group. This issue is expanding with the aging of the baby boom generation; not only will aging boomers represent a huge bump in the general elderly population but also the number of LGBTQ seniors is expected to double by 2030 (Fredriksen-Goldsen et al. 2011).

A recent study titled *The Aging and Health Report: Disparities and Resilience among Lesbian, Gay, Bisexual, and Transgender Older Adults* finds that LGBTQ older adults have higher rates of disability and depression than their heterosexual peers. They are also less likely to have a support system that might provide elder care: a partner and supportive children (Fredriksen-Goldsen et al. 2011). Even for those LGBTQ seniors who are partnered, some states do not recognize a legal relationship between two people of the same sex, which reduces their legal protection and financial options.

As they transition to assisted-living facilities, LGBTQ people have the added burden of "disclosure management:" the way they share their sexual and relationship identity. In one case study, a seventy-eight-year-old lesbian woman lived alone in a long-term care facility. She had been in a long-term relationship of thirty-two years and had been visibly active in the LGBTQ community earlier in her life. However, in the long-term care setting, she was much quieter about her sexual orientation. She "selectively disclosed" her sexual identity, feeling safer with anonymity and silence (Jenkins et al. 2010). A study from the National Senior Citizens Law Center reports that only 22 percent of LGBTQ older adults expect they could be open about their sexual orientation or gender identity in a long-term care facility. Even more telling is the finding that only 16 percent of non-LGBTQ older adults expected that LGBTQ people could be open with facility staff (National Senior Citizens Law Center 2011).

Same-sex marriage—a civil rights battleground that is being fought in many states—can have major implications for the way the LGBTQ community ages. With marriage comes the legal and financial protection afforded to opposite-sex couples, as well as less fear of exposure and a reduction in the need to "retreat to the closet" (Jenkins et al. 2010). Changes in this area are coming slowly, and in the meantime, advocates have many policy recommendations for how to improve the aging process for LGBTQ individuals. These recommendations include increasing federal research on LGBTQ elders, increasing (and enforcing existing) laws against discrimination, and amending the federal Family and Medical Leave Act to cover LGBTQ caregivers (Grant 2009).

Death and Dying

Figure 11.4.3.5: A young man sits at the grave of his great-grandmother. (Credit: Sara Goldsmith/flickr)

For most of human history, the standard of living was significantly lower than it is now. Humans struggled to survive with few amenities and very limited medical technology. The risk of death due to disease or accident was high in any life stage, and life expectancy was low. As people began to live longer, death became associated with old age.

For many teenagers and young adults, losing a grandparent or another older relative can be the first loss of a loved one they experience. It may be their first encounter with **grief**, a psychological, emotional, and social response to the feelings of loss that accompanies death or a similar event.

People tend to perceive death, their own and that of others, based on the values of their culture. While some may look upon death as the natural conclusion to a long, fruitful life, others may find the prospect of dying frightening to contemplate. People tend to have strong resistance to the idea of their own death, and strong emotional reactions of loss to the death of loved ones.

Viewing death as a loss, as opposed to a natural or tranquil transition, is often considered normal in the United States.

What may be surprising is how few studies were conducted on death and dying prior to the 1960s. Death and dying were fields that had received little attention until a psychologist named Elisabeth Kübler-Ross began observing people who were in the process of dying. As Kübler-Ross witnessed people's transition toward death, she found some common threads in their experiences. She observed that the process had five distinct stages: denial, anger, bargaining, depression, and acceptance. She published her findings in a 1969 book called *On Death and Dying*. The book remains a classic on the topic today.

Kübler-Ross found that a person's first reaction to the prospect of dying is *denial*: this is characterized by the person's not wanting to believe he or she is dying, with common thoughts such as "I feel fine" or "This is not really happening to me." The second stage is *anger*, when loss of life is seen as unfair and unjust. A person then resorts to the third stage, *bargaining*: trying to negotiate with a higher power to postpone the inevitable by reforming or changing the way he or she lives. The fourth stage, psychological *depression*, allows for resignation as the situation begins to seem hopeless. In the final stage, a person adjusts to the idea of death and reaches *acceptance*. At this point, the person can face death honestly, by regarding it as a natural and inevitable part of life and can make the most of their remaining time.

The work of Kübler-Ross was eye-opening when it was introduced. It broke new ground and opened the doors for sociologists, social workers, health practitioners, and therapists to study death and help those who were facing death. Kübler-Ross's work is generally considered a major contribution to **thanatology**: the systematic study of death and dying.

Of special interests to thanatologists is the concept of "dying with dignity." Modern medicine includes advanced medical technology that may prolong life without a parallel improvement to the quality of life one may have. In some cases, people may not want to continue living when they are in constant pain and no longer enjoying life. Should patients have the right to choose to die with dignity? Dr. Jack Kevorkian was a staunch advocate for **physician-assisted suicide**: the voluntary or physician-assisted use of lethal medication provided by a medical doctor to end one's life. This right to have a doctor help a patient die with dignity is controversial. In the United States, Oregon was the first state to pass a law allowing physician-assisted suicides. In 1997, Oregon instituted the Death with Dignity Act, which required the presence of two physicians for a legal assisted suicide. This law was successfully challenged by U.S. Attorney General John Ashcroft in 2001, but the appeals process ultimately upheld the Oregon law. As of 2019, seven states and the District of Columbia have passed similar laws allowing physician-assisted suicide.

The controversy surrounding death with dignity laws is emblematic of the way our society tries to separate itself from death. Health institutions have built facilities to comfortably house those who are terminally ill. This is seen as a compassionate act, helping relieve the surviving family members of the burden of caring for the dying relative. But studies almost universally show that people prefer to die in their own homes (Lloyd, White, and Sutton 2011). Is it our social responsibility to care for elderly relatives up until their death? How do we balance the

responsibility for caring for an elderly relative with our other responsibilities and obligations? As our society grows older, and as new medical technology can prolong life even further, the answers to these questions will develop and change.

The changing concept of **hospice** is an indicator of our society's changing view of death. Hospice is a type of healthcare that treats terminally ill people when "cure-oriented treatments" are no longer an option (Hospice Foundation of America 2012b). Hospice doctors, nurses, and therapists receive special training in the care of the dying. The focus is not on getting better or curing the illness, but on passing out of this life in comfort and peace. Hospice centers exist as a place where people can go to die in comfort, and increasingly, hospice services encourage at-home care so that someone has the comfort of dying in a familiar environment, surrounded by family (Hospice Foundation of America 2012a). While many of us would probably prefer to avoid thinking of the end of our lives, it may be possible to take comfort in the idea that when we do approach death in a hospice setting, it is in a familiar, relatively controlled place.

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11.4.4: Challenges Facing the Elderly

Learning Objectives

By the end of this section, you should be able to:

1. Interpret the historical and current trends of poverty among elderly populations
2. Recognize ageist thinking and ageist attitudes in individuals and institutions
3. Identify risks factors and outcomes regarding mistreatment and abuse of elderly individuals

Aging comes with many challenges. The loss of independence is one potential part of the process, as are diminished physical ability and age discrimination. The term **senescence** refers to the aging process, including biological, emotional, intellectual, social, and spiritual changes. This section discusses some of the challenges we encounter during this process.

As already observed, many older adults remain highly self-sufficient. Others require more care. Because the elderly typically no longer hold jobs, finances can be a challenge. And due to cultural misconceptions, older people can be targets of ridicule and stereotypes. The elderly face many challenges in later life, but they do not have to enter old age without dignity.

Poverty

(a) (b)

Figure 11.4.4.1: While elderly poverty rates showed an improvement trend for decades, the 2008 recession has changed some older people's financial futures. Some who had planned a leisurely retirement have found themselves at risk of late-age destitution. (Credit: (a) Michael Cohen/flickr; Photo (b) Alex Proimos/flickr)

For many people in the United States, growing older once meant living with less income. In 1960, almost 35 percent of the elderly existed on poverty-level incomes. A generation ago, the nation's oldest populations had the highest risk of living in poverty.

At the start of the twenty-first century, the older population was putting an end to that trend. Among people over sixty-five years old, the poverty rate fell from 30 percent in 1967 to 9.7 percent in 2008, well below the national average of 13.2 percent (U.S. Census Bureau 2009). However, given the subsequent recession, which severely reduced the retirement savings of many while taxing public support systems, how are the elderly affected? According to the Kaiser Commission on Medicaid and the Uninsured, the national poverty rate among the elderly had risen to 14 percent by 2010 (Urban Institute and Kaiser Commission 2010).

Before the recession hit, what had changed to cause a reduction in poverty among the elderly? What social patterns contributed to the shift? For several decades, a greater number of women joined the workforce. More married couples earned double incomes during their working years and saved more money for their retirement. Private employers and governments began offering better retirement programs. By 1990, senior citizens reported earning 36 percent more income on average than they did in 1980; that was five times the rate of increase for people under age thirty-five (U.S. Census Bureau 2009).

In addition, many people were gaining access to better healthcare. New trends encouraged people to live more healthful lifestyles by placing an emphasis on exercise and nutrition. There was also greater access to information about the health risks of behaviors such as cigarette smoking, alcohol consumption, and drug use. Because they were healthier, many older people continue to work past the typical retirement age and provide more opportunity to save for retirement. Will these patterns return once the recession ends? Sociologists will be watching to see. In the meantime, they are realizing the immediate impact of the recession on elderly poverty.

During the recession, older people lost some of the financial advantages that they'd gained in the 1980s and 1990s. From October 2007 to October 2009 the values of retirement accounts for people over age fifty lost 18 percent of their value. The sharp decline in the stock market also forced many to delay their retirement (Administration on Aging 2009).

Ageism

Figure 11.4.4.2: Are these street signs humorous or offensive? What shared assumptions make them humorous? Or is memory loss too serious to be made fun of? (Credit: Tumbleweed/flickr)

Driving to the grocery store, Peter, twenty-three years old, got stuck behind a car on a four-lane main artery through his city's business district. The speed limit was thirty-five miles per hour, and while most drivers sped along at forty to forty-five mph, the driver in front of him was going the minimum speed. Peter tapped on his horn. He tailgated the driver. Finally, Peter had a chance to pass the car. He glanced over. Sure enough, Peter thought, a gray-haired old man guilty of "DWE," driving while elderly.

At the grocery store, Peter waited in the checkout line behind an older woman. She paid for her groceries, lifted her bags of food into her cart, and toddled toward the exit. Peter, guessing her to be about eighty years old, was reminded of his grandmother. He paid for his groceries and caught up with her.

"Can I help you with your cart?" he asked.

"No, thank you. I can get it myself," she said and marched off toward her car.

Peter's responses to both older people, the driver and the shopper, were prejudiced. In both cases, he made unfair assumptions. He assumed the driver drove cautiously simply because the man was a senior citizen, and he assumed the shopper needed help carrying her groceries just because she was an older woman.

Responses like Peter's toward older people are fairly common. He didn't intend to treat people differently based on personal or cultural biases, but he did. **Ageism** is discrimination (when someone acts on a prejudice) based on age. Dr. Robert Butler coined the term in 1968, noting that ageism exists in all cultures (Brownell). Ageist attitudes and biases based on stereotypes reduce elderly people to inferior or limited positions.

Ageism can vary in severity. Peter's attitudes are probably seen as fairly mild, but relating to the elderly in ways that are patronizing can be offensive. When ageism is reflected in the workplace, in healthcare, and in assisted-living facilities, the effects of discrimination can be more severe. Ageism can make older people fear losing a job, feel dismissed by a doctor, or feel a lack of power and control in their daily living situations.

In early societies, the elderly were respected and revered. Many preindustrial societies observed **gerontocracy**, a type of social structure wherein the power is held by a society's oldest members. In some countries today, the elderly still have influence and power and their vast knowledge is respected. Reverence for the elderly is still a part of some cultures, but it has changed in many places because of social factors.

In many modern nations, however, industrialization contributed to the diminished social standing of the elderly. Today wealth, power, and prestige are also held by those in younger age brackets. The average age of corporate executives was fifty-nine years old in 1980. In 2008, the average age had lowered to fifty-four years old (Stuart 2008). Some older members of the workforce felt threatened by this trend and grew concerned that younger employees in higher-level positions would push them out of the job market. Rapid advancements in technology and media have required new skill sets that older members of the workforce are less likely to have.

Changes happened not only in the workplace but also at home. In agrarian societies, a married couple cared for their aging parents. The oldest members of the family contributed to the household by doing chores, cooking, and helping with child care. As economies shifted from agrarian to industrial, younger generations moved to cities to work in factories. The elderly began to be seen as an expensive burden. They did not have the strength and stamina to work outside the home. What began during industrialization, a trend toward older people living apart from their grown children, has become commonplace. As you saw in the opening, children of older people can also feel guilt, sadness, and sometimes anger at both taking care of aging parents and with accepting that their parents are losing their abilities. Living apart, especially if an older person is moved to a nursing home or other facility, can often exacerbate these issues.

Mistreatment and Abuse

Mistreatment and abuse of the elderly is a major social problem. As expected, with the biology of aging, the elderly sometimes become physically frail. This frailty renders them dependent on others for care—sometimes for small needs like household tasks, and sometimes for assistance with basic functions like eating and toileting. Unlike a child, who also is dependent on another for care, an elder is an adult with a lifetime of experience, knowledge, and opinions—a more fully developed person. This makes the care-providing situation more complex.

Elder abuse occurs when a caretaker intentionally deprives an older person of care or harms the person in his or her charge. Caregivers may be family members, relatives, friends, health professionals, or employees of senior housing or nursing care. The elderly may be subject to many different types of abuse.

In a 2009 study on the topic led by Dr. Ron Acierno, the team of researchers identified five major categories of elder abuse: 1) physical abuse, such as hitting or shaking, 2) sexual abuse, including rape and coerced nudity, 3) psychological or emotional abuse, such as verbal harassment or humiliation, 4) neglect or failure to provide adequate care, and 5) financial abuse or exploitation (Acierno 2010).

The National Center on Elder Abuse (NCEA), a division of the U.S. Administration on Aging, also identifies abandonment and self-neglect as types of abuse. The table below shows some of the signs and symptoms that the NCEA encourages people to notice.

Type of Abuse	Signs and Symptoms
Physical abuse	Bruises, untreated wounds, sprains, broken glasses, lab findings of medication overdose
Sexual abuse	Bruises around breasts or genitals, torn or bloody underclothing, unexplained venereal disease
Emotional/psychological abuse	Being upset or withdrawn, unusual dementia-like behavior (rocking, sucking)
Neglect	Poor hygiene, untreated bedsores, dehydration, soiled bedding
Financial	Sudden changes in banking practices, inclusion of additional names on bank cards, abrupt changes to will
Self-neglect	Untreated medical conditions, unclean living area, lack of medical items like dentures or glasses

The National Center on Elder Abuse encourages people to watch for these signs of mistreatment. (Credit: National Center on Elder Abuse)

How prevalent is elder abuse? Two recent U.S. studies found that roughly one in ten elderly people surveyed had suffered at least one form of elder abuse. Some social researchers believe elder abuse is underreported and that the number may be higher. The risk of abuse also increases

in people with health issues such as dementia (Kohn and Verhoek-Oftedahl 2011). Older women were found to be victims of verbal abuse more often than their male counterparts.

In Acierno's study, which included a sample of 5,777 respondents aged sixty and older, 5.2 percent of respondents reported financial abuse, 5.1 percent said they'd been neglected, and 4.6 endured emotional abuse (Acierno 2010). The prevalence of physical and sexual abuse was lower at 1.6 and 0.6 percent, respectively (Acierno 2010).

Other studies have focused on the caregivers to the elderly in an attempt to discover the causes of elder abuse. Researchers identified factors that increased the likelihood of caregivers perpetrating abuse against those in their care. Those factors include inexperience, having other demands such as jobs (for those who weren't professionally employed as caregivers), caring for children, living full-time with the dependent elder, and experiencing high stress, isolation, and lack of support (Kohn and Verhoek-Oftedahl 2011).

A history of depression in the caregiver was also found to increase the likelihood of elder abuse. Neglect was more likely when care was provided by paid caregivers. Many of the caregivers who physically abused elders were themselves abused—in many cases, when they were children. Family members with some sort of dependency on the elder in their care were more likely to physically abuse that elder. For example, an adult child caring for an elderly parent while at the same time depending on some form of income from that parent, is considered more likely to perpetrate physical abuse (Kohn and Verhoek-Oftedahl 2011).

A survey in Florida found that 60.1 percent of caregivers reported verbal aggression as a style of conflict resolution. Paid caregivers in nursing homes were at a high risk of becoming abusive if they had low job satisfaction, treated the elderly like children, or felt burnt out (Kohn and Verhoek-Oftedahl 2011). Caregivers who tended to be verbally abusive were found to have had less training, lower education, and higher likelihood of depression or other psychiatric disorders. Based on the results of these studies, many housing facilities for seniors have increased their screening procedures for caregiver applicants.

BIG PICTURE

World War II Veterans

Figure 11.4.4.3: World War II (1941–1945) veterans and members of an Honor Flight from Milwaukee, Wisconsin, visit the National World War II Memorial in Washington, DC. Most of these men and women were in their late teens or twenties when they served. (Credit: Sean Hackbarth/flickr)

World War II was a defining event in recent human history, and set the stage for America to become an economic and military superpower. Over 16 million Americans served in the war—an enormous amount on any scale, but especially significant considering that the U.S. had almost 200 million fewer people than it does today. That sizable and significant group is aging. Many are in their eighties and nineties, and many others have already passed on. Of the 16 million, less than 300,000 are alive. Data suggest that by 2036, there will be no living veterans of WWII (U.S. Department of Veteran Affairs).

When these veterans came home from the war and ended their service, little was known about posttraumatic stress disorder (PTSD). These heroes did not receive the mental and physical healthcare that could have helped them. As a result, many of them, now in old age, are dealing with the effects of PTSD. Research suggests a high percentage of World War II veterans are plagued by flashback memories and isolation, and that many "self-medicate" with alcohol.

Research has found that veterans of any conflict are more than twice as likely as nonveterans to commit suicide, with rates highest among the oldest veterans. Reports show that WWII-era veterans are four times as likely to take their own lives as people of the same age with no military service (Glantz 2010).

In May 2004, the National World War II Memorial in Washington, DC, was completed and dedicated to honor those who served during the conflict. Dr. Earl Morse, a physician and retired Air Force captain, treated many WWII veterans. He encouraged them to visit the memorial,

knowing it could help them heal. Many WWII veterans expressed interest in seeing the memorial. Unfortunately, many were in their eighties and were neither physically nor financially able to travel on their own. Dr. Morse arranged to personally escort some of the veterans and enlisted volunteer pilots who would pay for the flights themselves. He also raised money, insisting the veterans pay nothing. By the end of 2005, 137 veterans, many using wheelchairs, had made the trip. The Honor Flight Network was up and running.

As of 2017, the Honor Flight Network had flown more than 200,000 U.S. veterans of World War II, the Korean War, and the Vietnam War to Washington. The round-trip flights leave for day-long trips from over 140 airports in thirty states, staffed by volunteers who care for the needs of the elderly travelers (Honor Flight Network 2021).

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11.4.5: Theoretical Perspectives on Aging

Learning Objectives

By the end of this section, you should be able to:

1. Compare and contrast sociological theoretical perspectives on aging

What roles do individual senior citizens play in your life? How do you relate to and interact with older people? What role do they play in neighborhoods and communities, in cities and in states? Sociologists are interested in exploring the answers to questions such as these through three different perspectives: functionalism, symbolic interactionism, and conflict theory.

Functionalism

Functionalists analyze how the parts of society work together. Functionalists gauge how society's parts are working together to keep society running smoothly. How does this perspective address aging? The elderly, as a group, are one of society's vital parts.

Functionalists find that people with better resources who stay active in other roles adjust better to old age (Crosnoe and Elder 2002). Three social theories within the functional perspective were developed to explain how older people might deal with later-life experiences.

Figure 11.4.5.1: Does being old mean disengaging from the world? (Credit: Candida Performa/Wikimedia Commons)

The earliest gerontological theory in the functionalist perspective is **disengagement theory**, which suggests that withdrawing from society and social relationships is a natural part of growing old. There are several main points to the theory. First, because everyone expects to die one day, and because we experience physical and mental decline as we approach death, it is natural to withdraw from individuals and society. Second, as the elderly withdraw, they receive less reinforcement to conform to social norms. Therefore, this withdrawal allows a greater freedom from the pressure to conform. Finally, social withdrawal is gendered, meaning it is experienced differently by men and women. Because men focus on work and women focus on marriage and family, when they withdraw they will be unhappy and directionless until they adopt a role to replace their accustomed role that is compatible with the disengaged state (Cummings and Henry 1961).

The suggestion that old age was a distinct state in the life course, characterized by a distinct change in roles and activities, was groundbreaking when it was first introduced. However, the theory is no longer accepted in its classic form. Criticisms typically focus on the application of the idea that seniors universally naturally withdraw from society as they age, and that it does not allow for a wide variation in the way people experience aging (Hothschild 1975).

The social withdrawal that Cummings and Henry recognized (1961), and its notion that elderly people need to find replacement roles for those they've lost, is addressed anew in **activity theory**. According to this theory, activity levels and social involvement are key to this process, and key to happiness (Havinghurst 1961; Neugarten 1964; Havinghurst, Neugarten, and Tobin 1968). According to this theory, the more active and involved an elderly person is, the happier he or she will be. Critics of this theory point out that access to social opportunities and activity are not equally available to all. Moreover, not everyone finds fulfillment in the presence of others or participation in activities. Reformulations of this theory suggest that participation in informal activities, such as hobbies, are what most affect later life satisfaction (Lemon, Bengtson, and Petersen 1972).

According to **continuity theory,** the elderly make specific choices to maintain consistency in internal (personality structure, beliefs) and external structures (relationships), remaining active and involved throughout their elder years. This is an attempt to maintain social equilibrium and stability by making future decisions on the basis of already developed social roles (Atchley 1971; Atchley 1989). One criticism of this theory is its emphasis on so-called "normal" aging, which marginalizes those with chronic diseases such as Alzheimer's.

SOCIOLOGY IN THE REAL WORLD

The Graying of American Prisons

Figure 11.4.5.1: Would you want to spend your retirement here? A growing elderly prison population requires asking questions about how to deal with senior inmates. (Credit: Claire Rowland/Wikimedia Commons)

The COVID-19 pandemic placed a particular burden on prison populations and government officials who manage them. Many people unfamiliar with American prisons may have assumed this concern was due to the obvious: Prisons are by definition confined spaces, where space and freedom are in short supply. Incarcerated people often share cells, restrooms, and other facilities.

These are all contributing factors to the grave concerns about prisoners and COVID. But they were all exacerbated by the one overall comorbidity for the coronavirus: age.

Just like elderly people outside of prison generally suffered the most from the disease, the same age group was highly susceptible in prison. Perhaps the most dire circumstance is the size and percentage of that age group in prison. By the time the pandemic hit, the population of people over 50 in American prisons was, for the first time in history, larger than every other age group, and nearly 200,000 people in correctional facilities were 55 and over. That portion of the prison population tripled from 2000 to 2016 (Li 2020).

Two factors contribute significantly to this country's aging prison population. One is the tough-on-crime reforms of the 1980s and 1990s, when mandatory minimum sentencing and "three strikes" policies sent many people to jail for thirty years to life, even when the third strike was a relatively minor offense. Many of today's elderly prisoners are those who were incarcerated thirty years ago for life sentences. The other factor influencing today's aging prison population is the aging of the overall population. As discussed in the section on aging in the United States, the percentage of people over sixty-five years old is increasing each year due to rising life expectancies and the aging of the Baby Boom generation.

So why should it matter that the elderly prison population is growing so swiftly? As discussed in the section on the process of aging, growing older is accompanied by a host of physical problems, like failing vision, mobility, and hearing. Chronic illnesses like heart disease, arthritis, and diabetes also become increasingly common as people age, whether they are in prison or not. In many cases, elderly prisoners are physically incapable of committing a violent—or possibly any—crime. Is it ethical to keep them locked up for the short remainder of their lives? And is it practical?

Aging inmates require far more healthcare, which places massive burdens on prison budgets and expenditures. When the healthcare costs are considered, some officials estimate the costs of incarcerating an aging person to be three times higher than to keep a younger person in prison. On the flip side, reducing prison sentences in Maryland saved an estimated $185 million over five years. When considering that many of these elderly people have served the majority of their sentence and generally pose a lower risk to society, many people in the corrections system itself advocate for releasing them early (Reese 2019).

Conflict Perspective

Figure 11.4.5.2: At a public protest, older people make their voices heard. In advocating for themselves, they help shape public policy and alter the allotment of available resources. (Credit: longislandwins/flickr)

Theorists working the conflict perspective view society as inherently unstable, an institution that privileges the powerful wealthy few while marginalizing everyone else. According to the guiding principle of conflict theory, social groups compete with other groups for power and scarce resources. Applied to society's aging population, the principle means that the elderly struggle with other groups—for example, younger society members—to retain a certain share of resources. At some point, this competition may become conflict.

For example, some people complain that the elderly get more than their fair share of society's resources. In hard economic times, there is great concern about the huge costs of Social Security and Medicare. One of every four tax dollars, or about 28 percent, is spent on these two programs. In 1950, the federal government paid $781 million in Social Security payments. Now, the payments are 870 times higher. In 2008, the government paid $296 billion (Statistical Abstract 2011). The medical bills of the nation's elderly population are rising dramatically. While there is more care available to certain segments of the senior community, it must be noted that the financial resources available to the aging can vary tremendously by race, social class, and gender.

There are three classic theories of aging within the conflict perspective. **Modernization theory** (Cowgill and Holmes 1972) suggests that the primary cause of the elderly losing power and influence in society are the parallel forces of industrialization and modernization. As societies modernize, the status of elders decreases, and they are increasingly likely to experience social exclusion. Before industrialization, strong social norms bound the younger generation to care for the older. Now, as societies industrialize, the nuclear family replaces the extended family. Societies become increasingly individualistic, and norms regarding the care of older people change. In an individualistic industrial society, caring for an elderly relative is seen as a voluntary obligation that may be ignored without fear of social censure.

The central reasoning of modernization theory is that as long as the extended family is the standard family, as in preindustrial economies, elders will have a place in society and a clearly defined role. As societies modernize, the elderly, unable to work outside of the home, have less to offer economically and are seen as a burden. This model may be applied to both the developed and the developing world, and it suggests that as people age they will be abandoned and lose much of their familial support since they become a nonproductive economic burden.

Another theory in the conflict perspective is **age stratification theory** (Riley, Johnson, and Foner 1972). Though it may seem obvious now, with our awareness of ageism, age stratification theorists were the first to suggest that members of society might be stratified by age, just as they are stratified by race, class, and gender. Because age serves as a basis of social control, different age groups will have varying access to social resources such as political and economic power. Within societies, behavioral age norms, including norms about roles and appropriate behavior, dictate what members of age cohorts may reasonably do. For example, it might be considered deviant for an elderly woman to wear a bikini because it violates norms denying the sexuality of older females. These norms are specific to each age strata, developing from culturally-based ideas about how people should "act their age."

Thanks to amendments to the Age Discrimination in Employment Act (ADEA), which drew attention to some of the ways in which our society is stratified based on age, U.S. workers no longer must retire upon reaching a specified age. As first passed in 1967, the ADEA provided protection against a broad range of age discrimination and specifically addressed termination of employment due to age, age-specific layoffs, advertised positions specifying age limits or preferences, and denial of healthcare benefits to those over sixty-five years old (U.S. EEOC 2012).

Age stratification theory has been criticized for its broadness and its inattention to other sources of stratification and how these might intersect with age. For example, one might argue that an older white male occupies a more powerful role, and is far less limited in his choices, compared to an older white female based on his historical access to political and economic power.

Finally, **exchange theory** (Dowd 1975), a rational choice approach, suggests we experience an increased dependence as we age and must increasingly submit to the will of others because we have fewer ways of compelling others to submit to us. Indeed, inasmuch as relationships are based on mutual exchanges, as the elderly become less able to exchange resources, they will see their social circles diminish. In this model, the only means to avoid being discarded is to engage in resource management, like maintaining a large inheritance or participating in social exchange systems via child care. In fact, the theory may depend too much on the assumption that individuals are calculating. It is often criticized for affording too much emphasis to material exchange and devaluing nonmaterial assets such as love and friendship.

Figure 11.4.5.3: The subculture of aging theory posits that the elderly create their own communities because they have been excluded from other groups. (Credit: Icnacio Palomo Duarte/flickr)

Symbolic Interactionism

Generally, theories within the symbolic interactionist perspective focus on how society is created through the day-to-day interaction of individuals, as well as the way people perceive themselves and others based on cultural symbols. This microanalytic perspective assumes that if people develop a sense of identity through their social interactions, their sense of self is dependent on those interactions. A woman whose main interactions with society make her feel old and unattractive may lose her sense of self. But a woman whose interactions make her feel valued and important will have a stronger sense of self and a happier life.

Symbolic interactionists stress that the changes associated with old age, in and of themselves, have no inherent meaning. Nothing in the nature of aging creates any particular, defined set of attitudes. Rather, attitudes toward the elderly are rooted in society.

One microanalytical theory is Rose's (1962) **subculture of aging theory**, which focuses on the shared community created by the elderly when they are excluded (due to age), voluntarily or involuntarily, from participating in other groups. This theory suggests that elders will disengage from society and develop new patterns of interaction with peers who share common backgrounds and interests. For example, a group consciousness may develop within such groups as AARP around issues specific to the elderly like the Medicare "doughnut hole," focused on creating social and political pressure to fix those issues. Whether brought together by social or political interests, or even geographic regions, elders may find a strong sense of community with their new group.

Another theory within the symbolic interaction perspective is **selective optimization with compensation theory**. Baltes and Baltes (1990) based their theory on the idea that successful personal development throughout the life course and subsequent mastery of the challenges associated with everyday life are based on the components of selection, optimization, and

compensation. Though this happens at all stages in the life course, in the field of gerontology, researchers focus attention on balancing the losses associated with aging with the gains stemming from the same. Here, aging is a process and not an outcome, and the goals (compensation) are specific to the individual.

According to this theory, our energy diminishes as we age, and we select (selection) personal goals to get the most (optimize) for the effort we put into activities, in this way making up for (compensation) the loss of a wider range of goals and activities. In this theory, the physical decline postulated by disengagement theory may result in more dependence, but that is not necessarily negative, as it allows aging individuals to save their energy for the most meaningful activities. For example, a professor who values teaching sociology may participate in a phased retirement, never entirely giving up teaching, but acknowledging personal physical limitations that allow teaching only one or two classes per year.

Swedish sociologist Lars Tornstam developed a symbolic interactionist theory called **gerotranscendence**: the idea that as people age, they transcend the limited views of life they held in earlier times. Tornstam believes that throughout the aging process, the elderly become less self-centered and feel more peaceful and connected to the natural world. Wisdom comes to the elderly, Tornstam's theory states, and as the elderly tolerate ambiguities and seeming contradictions, they let go of conflict and develop softer views of right and wrong (Tornstam 2005).

Tornstam does not claim that everyone will achieve wisdom in aging. Some elderly people might still grow bitter and isolated, feel ignored and left out, or become grumpy and judgmental. Symbolic interactionists believe that, just as in other phases of life, individuals must struggle to overcome their own failings and turn them into strengths.

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11.4.6: Key Terms

KEY TERMS

activity theory

a theory which suggests that for individuals to enjoy old age and feel satisfied, they must maintain activities and find a replacement for the statuses and associated roles they have left behind as they aged

age stratification theory

a theory which states that members of society are stratified by age, just as they are stratified by race, class, and gender

ageism

discrimination based on age

baby Boomers

people in the United States born between approximately 1946 and 1964

centenarians

people 100 years old or older

cohort

a group of people who share a statistical or demographic trait

continuity theory

a theory which states that the elderly make specific choices to maintain consistency in internal (personality structure, beliefs) and external structures (relationships), remaining active and involved throughout their elder years

dependency ratio

the number of nonproductive citizens (young, disabled, elderly) to productive working citizens

disengagement theory

a theory which suggests that withdrawing from society and social relationships is a natural part of growing old

elder abuse

the act of a caretaker intentionally depriving an older person of care or harming the person in their charge

exchange theory

a theory which suggests that we experience an increased dependence as we age and must increasingly submit to the will of others, because we have fewer ways of compelling others to submit to us

filial piety

deference and respect to one's parents and ancestors in all things

geriatrics

a medical specialty focusing on the elderly

gerontocracy

a type of social structure wherein the power is held by a society's oldest members

gerontology

a field of science that seeks to understand the process of aging and the challenges encountered as seniors grow older

gerotranscendence

the idea that as people age, they transcend limited views of life they held in earlier times

grief

a psychological, emotional, and social response to the feelings of loss that accompanies death or a similar event

hospice

healthcare that treats terminally ill people by providing comfort during the dying process

life course

the period from birth to death, including a sequence of predictable life events

life expectancy

the number of years a newborn is expected to live

modernization theory

a theory which suggests that the primary cause of the elderly losing power and influence in society are the parallel forces of industrialization and modernization

physician-assisted suicide

the voluntary use of lethal medication provided by a medical doctor to end one's life

primary aging

biological factors such as molecular and cellular changes

secondary aging

aging that occurs due to controllable factors like exercise and diet

selective optimization with compensation theory

a theory based on the idea that successful personal development throughout the life course and subsequent mastery of the challenges associated with everyday life are based on the components of selection, optimization, and compensation

senescence

the aging process, including biological, intellectual, emotional, social, and spiritual changes

social gerontology

a specialized field of gerontology that examines the social (and sociological) aspects of aging

subculture of aging theory

a theory that focuses on the shared community created by the elderly when they are excluded (due to age), voluntarily or involuntarily, from participating in other groups

supercentenarians

people 110 of age or older

thanatology

the systematic study of death and dying

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11.4.7: Section Summary

11.4.2 Who Are the Elderly? Aging in Society

The social study of aging uses population data and cohorts to predict social concerns related to aging populations. In the United States, the population is increasingly older (called "the graying of the United States"), especially due to the baby Boomer segment. Global studies on aging reveal a difference in life expectancy between core and peripheral nations as well as a discrepancy in nations' preparedness for the challenges of increasing elderly populations.

11.4.3 The Process of Aging

Old age affects every aspect of human life: biological, social, and psychological. Although medical technology has lengthened life expectancies, it cannot eradicate aging and death. Cultural attitudes shape the way our society views old age and dying, but these attitudes shift and evolve over time.

11.4.4 Challenges Facing the Elderly

As people enter old age, they face challenges. Ageism, which involves stereotyping and discrimination against the elderly, leads to misconceptions about their abilities. Although elderly poverty has been improving for decades, many older people may be detrimentally affected by the 2008 recession. Some elderly people grow physically frail and, therefore, dependent on caregivers, which increases their risk of elder abuse.

11.4.5 Theoretical Perspectives on Aging

The three major sociological perspectives inform the theories of aging. Theories in the functionalist perspective focus on the role of elders in terms of the functioning of society as a whole. Theories in the conflict perspective concentrate on how elders, as a group, are at odds with other groups in society. And theories in the symbolic interactionist perspective focus on how elders' identities are created through their interactions.

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11.5: Disability

NOTE

This module/section is an unpublished paper by a student at the University of Houston-Clear Lake who was in Ruth Dunn's Minorities in America class in the fall of 2007. Ruth Dunn has the student's permission to use the paper, but not to use the student's name. Ruth Dunn has made some changes to the style, but not to the substance other than to remove some charts and graphs that are unnecessary for this discussion.

There are many different types of disabilities and disabled persons in the United States as well as throughout the world. While no one definition can adequately describe all disabilities, the universally-accepted definition describes a disability as any physical or mental impairment that substantially limits a major life activity. (U.S. Department of Justice, ADA, 2007.) Determining whether a condition is recognized as a disability is decided on a case-by-case basis. (U.S. Department of Justice, ADA, 2007.) The term disability includes cognitive, developmental, intellectual, physical, and learning impairments. Some disabilities are congenital (present at birth), or the result of an accident or illness, or age-related. A person may be mildly or severely affected by their disability. Some examples of disabilities include attention deficit disorder, Down's syndrome, mental retardation, autism, deafness, blindness, dyslexia, paralysis, difficulty with memory, and brain injuries caused by trauma.

Disability Does Not Mean Inability

The term disability does not mean inability and it is not a sickness. (US National Library of Medicine, 2007.) Although many disabilities limit a person's mobility and functionality, thousands of disabled individuals in the United States lead relatively normal lives which include working, playing, and socializing in a world designed for non-disabled persons. Many individuals in the public spotlight are, or were, disabled, including Helen Keller, President Franklin D. Roosevelt, Senator Bob Dole, and entertainers Ray Charles and Stevie Wonder. The purpose of this research paper is to focus on employment of disabled persons in the United States, what the government has done over the past thirty years to assist and protect disabled individuals in the workplace, and what difference (if any) these changes have made for disabled persons.

Employment

Employment provides individuals with social integration as well as many different, positive feelings about themselves. Pride, independence, security, self confidence, and self worth are just a few examples of what having a job can mean and how it can affect one's perception of self. For a person with a disability however, securing and retaining employment has not always been an easy endeavor. Statistics reported in the 2006 Disability Status Report published by Cornell University in Ithaca, New York revealed that in the United States, approximately 37.7 percent of working-age people had a disability. In Texas, this percentage was 12.7. The percentage of people with a disability who did not have jobs, but were actively looking for one was 8.7 percent. The poverty rate was listed at 25.3 percent for working-aged disabled individuals. (Rehabilitation

Research and Training Center on Disability Demographics and Statistics, 2006 Disability Status Report. Ithaca, NY; Cornell University.)

This study also revealed that the employment percentage of working-age individuals who are disabled but not institutionalized is only 19.3. The research found that the median annual household income for disabled persons was $36,300 compared to $60,000 for persons who were not disabled. In addition, in 2002, five hundred random interviews conducted with businesses across America revealed that most companies do not employ anyone with a disability. Specifically, only 26 percent of US business in 2002 had one employee with a disability. Twenty percent of employers interviewed admitted their own discrimination as the main reason for not hiring disabled individuals. Employers also stated they did not know how to find people with disabilities to hire; they did not know how to interview them; and they did not know how to address needed accommodations and assistive technology (i.e. TTY phone system; voice-activated computers and telephones). Other reasons were the assumptions that a disabled person could not perform to the standards of the business and it would be too costly to provide the necessary accommodations for the disabled person. (Rehabilitation Research and Training Center on Disability Demographics and Statistics, 2006 Disability Status Report. Ithaca, NY; Cornell University.)

Discrimination

In an attempt to eliminate discrimination in the workplace against people with disabilities, the US Rehabilitation Act of 1973 was passed by the United States government. The provisions of the Act state that any government-funded organization must provide accessibility programs and services to disabled people. In 1990, the Americans with Disabilities Act (ADA) was created and became effective in 1992. The ADA is a significant civil rights law designed to eliminate the obstacles of employment, stop discrimination, and guarantee education for disabled individuals. Its purpose is to protect qualified individuals with disabilities from being discriminated against in the employment areas of hiring; firing; job training and placement, and advancement; compensation; and any privileges of employment. The ADA applies to labor unions, employment agencies, private companies, restaurants, retails stores, movie theaters, and state and local governments which employ fifteen or more people. The ADA offers protection to persons with a physical or mental impairment which limits one or more of their life activities, and requires employers to extend reasonable accommodations to these persons. It also prohibits discrimination based solely on the opinion that the disabled person is a potential risk to the company (i.e. extensive illness). In the years since the ADA became a law, it has increased public awareness of disabled persons in the United States, assisted in improving the environment to accommodate disabilities, and advanced technological communications. (U.S. Department of Justice, ADA, 2007.)

Moreover, advocacy groups across the country continue striving to increase the percentage of employed disabled persons through programs which promote employer awareness and dispel myths surrounding the disabled community. The progress is slow, and data collected through research is the most effective tool to change skepticism in hiring into enthusiasm in hiring. These awareness programs highlight the *abilities* of the disabled person rather than their *disability*. Many employers are finally beginning to recognize the value a person has to offer rather than

focusing on that person's disability. The changing culture of today's business world also makes it easier for a disabled person to get hired. Businesses are not as rigid as they were in the past and turnover is more rapid. New concepts put into place such as flexible work hours, working from home, and teleworking (videoconferences, net meetings, etc.) can all have a positive impact in the hiring of disabled persons.

Other resources that provide valuable information and assistance to employers and disabled persons are the internet and the advancement of technology. Government websites, as well as state-based websites now exist and offer instructions and assistance to disabled persons in the areas of employment, health care, education, taxes, job training, housing, transportation, emergency preparedness, benefits, technology, community life, and civil rights. Businesses can find websites that guide them through the process of locating, interviewing, and hiring disabled individuals. Several informative and useful websites are: DisabilityInfo.gov, the U.S. Equal Employment Opportunity Commission, the U.S. Department of Justice/ADA home page, and the City of Houston eGovernment Center. Cutting edge technological advancements such as voice-recognition systems, voice synthesizers, computer screen readers, telecaptioners (closed captioning), and telephone TTY devices make it much easier for the disabled world to function and assimilate into the non-disabled world. Additionally, as more and more of these devices become commonplace, the stigmas associated with the disabled person will dissolve, and they will not be seen as different, unusual, unable individuals. Two excellent websites are the U.S. Department of Justice, ADA, and ABLEDATA. Both provide valuable information regarding these devices and how to purchase them which can aid in eliminating the stress, guesswork, dread, and overwhelmed feeling a person may face when he/she must deal with these issues.

Positive Images

Another positive stride in the employment of disabled persons over the past few years is their visibility in newspaper ads and television commercials. The national retail chains Home Depot, Walgreens Pharmacy, and CVS Pharmacy all promote hiring disabled individuals and encourage other businesses to do the same. Home Depot is one retailer who features disabled employees in many of their newspaper ads and television commercials. This marketing tool is encouraging to other disabled individuals because it illustrates success stories. It also demonstrates to other employers that disabled persons are competent, valuable employees who are easily integrated into the work environment. Randall's and Kroger grocery stores also endorse hiring disabled persons to perform jobs such as stocking shelves, sacking groceries, and loading groceries into customer vehicles.

As visibility of competent, qualified, dependable disabled persons in the working environment increases, more business owners will have confidence in selecting future employees from the disabled community, thus creating social change and dissolving old stereotypes. Disabled individuals will be seen as valuable employees and will be afforded improved education, housing, and transportation opportunities. The disabled community will no longer be dependent on others to take care of them or speak for them. They will be independent members of society who have equality, autonomy, and confidence in knowing they are viable members of the world in which they live.

Almost one in five people has a disability. An estimated 19.4% of non-institutionalized civilians in the United States, totaling 8.9 million people, have a disability. Almost half of these people (an estimated 24.1 million people) can be considered to have a severe disability. Activities considered to be major are: children under age 5: playing; persons 5-17: attending school; persons 18-69: working or keeping house; People age 70 and over: ability to care for oneself (bathing, eating, dressing, or getting around the home) and one's home (doing household chores, doing necessary business, shopping, or getting around for other purposes) without another person's assistance. Almost one out of every seven people has an activity limitation. Activity limitation: In the National Health Interview Survey (NHIS), each person is classified into one of four categories: (a) unable to perform the major activity, (b) able to perform the major activity but limited in the kind or amount of this activity, (c) not limited in the major activity but limited in the kind or amount of other activities, and (d) not limited in any way. The NHIS classifies people as limited (groups a-c) or not limited (group d). Persons are not classified as limited in activity unless one or more chronic health conditions are reported as the cause of the activity limitation (see also chronic health condition and major activity). An estimated 4.0% (9.2 million) of the non-institutionalized population age 5 and over in the United States need personal assistance with one or more activities. Over 5.8 million people need assistance in "instrumental activities of daily living" (IADL), while 3.4 million need assistance in "activities of daily living" (ADL). ADL includes bathing, dressing, eating, walking, and other personal functioning activities. IADL covers preparing meals, shopping, using the phone, doing laundry, and other measures of living independently. If someone has a need for assistance in ADL, it is assumed that they will have a need for assistance in IADL also. One in 25 people age 5 and over needs assistance in daily activities. The number of non-institutionalized people in the United States with a work disability is estimated to be 16.9 million, which represents 10.1% of the working age population (16 to 64 years old). Higher percentages of blacks are work disabled than whites or Hispanics: 15.4% of blacks have a work disability (3.2 million people) compared to 9.6% for people of Hispanic origin (1.6 million), 9.4% of whites (13 million) and 8.5% of other races (700,000). Work disability increases in frequency with age. At 16-24 years, 4.2% are work disabled; for 25-34 years, the proportion rises to 6.4%; for 35-44 years, 9.4%; from 45-54 years, 13.3%; and for 55-64 years, 22.9% are work disabled. Technical Note: The Hispanic category can include people of any race. Blacks report the highest rates of work disability.

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11.6: Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits discrimination against people with disabilities in several areas, including employment, transportation, public accommodations, communications and access to state and local government' programs and services. As it relates to employment, Title I of the ADA protects the rights of both employees and job seekers. The ADA also establishes requirements for telecommunications relay services. Title IV, which is regulated by the Federal Communications Commission (FCC), also requires closed captioning of federally funded public service announcements.

While the U.S. Department of Labor's (DOL) Office of Disability Employment Policy (ODEP) does not enforce the ADA, it does offer publications and other technical assistance on the basic requirements of the law, including covered employers' obligation to provide reasonable accommodations to qualified job applicants and employees with disabilities. For a quick overview of the ADA read "The Americans with Disabilities Act: A Brief Overview."

In addition to the U.S. Department of Labor, several other federal agencies have a role in enforcing, or investigating claims involving, the ADA:

- The U.S Equal Employment Opportunity Commission (EEOC) enforces Title I of the ADA. Title I prohibits private employers, state and local governments, employment agencies and labor unions from discriminating against qualified individuals with disabilities in applying for jobs, hiring, firing and job training.
- The U.S. Department of Transportation enforces regulations governing transit, which includes ensuring that recipients of federal aid and state and local entities responsible for roadways and pedestrian facilities do not discriminate on the basis of disability in highway transportation programs or activities. The department also issues guidance to transit agencies on how to comply with the ADA to ensure that public transit vehicles and facilities are accessible.
- The Federal Communications Commission (FCC) enforces regulations covering telecommunication services. Title IV of the ADA covers telephone and television access for people with hearing and speech disabilities. It requires telephone and Internet companies to provide a nationwide system of telecommunications relay services that allow people with hearing and speech disabilities to communicate over the telephone.
- The U.S. Department of Justice enforces ADA regulations governing state and local government services (Title II) and public accommodations (Title III).
- The U.S. Department of Education, like many other federal agencies, enforces Title II of the ADA, which prohibit discrimination in programs or activities that receive federal financial assistance from the department.
- The U.S. Department of Health and Human Services (HHS) also enforces Title II of the ADA relating to access to programs, services and activities receiving HHS federal financial assistance. This includes ensuring that people who are deaf or hard-of-hearing have access to sign language interpreters and other auxiliary aids in hospitals and clinics when needed for effective communication.
- Another federal agency, the Architectural and Transportation Barriers Compliance Board (ATBCB), also known as the Access Board, issues guidelines to ensure that buildings, facilities and transit vehicles are accessible to people with disabilities. The Guidelines & Standards issued

under the ADA and other laws establish design requirements for the construction and alteration of facilities. These standards apply to places of public accommodation, commercial facilities, and state and local government facilities.

Two agencies within the U.S. Department of Labor enforce parts of the ADA. The Office of Federal Contract Compliance Programs (OFCCP) has coordinating authority under the employment-related provisions of the ADA. The Civil Rights Center (CRC) is responsible for enforcing Title II of the ADA as it applies to the labor- and workforce-related practices of state and local governments and other public entities. Visit the Laws & Regulations subtopic for specific information on these provisions.

DOL Resources on the ADA

- Disability Employment Policy Resources by Topic — The ADA
- Employers and the ADA: Myths and Facts
- The ADA Amendments Act of 2008: Frequently Asked Questions

Other Resources on the ADA

- Facts About the Americans with Disabilities Act
- The ADA: Questions and Answers
- Employees' Practical Guide to Requesting and Negotiating Reasonable Accommodation Under the ADA
- Employers' Practical Guide to Reasonable Accommodation Under the Americans with Disabilities Act (ADA)
- Employer Assistance and Resource Network on Disability Inclusion — The Americans with Disabilities Act
- ADA Frequently Asked Questions

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11.7: Disability Discrimination

Disability discrimination occurs when an employer or other entity covered by the Americans with Disabilities Act, as amended, or the Rehabilitation Act, as amended, treats a qualified individual who is an employee or applicant unfavorably because he or she has a disability.

Disability discrimination also occurs when a covered employer or other entity treats an applicant or employee less favorably because he or she has a history of a disability (such as a past major depressive episode) or because he or she is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer ("undue hardship").

The law also protects people from discrimination based on their relationship with a person with a disability (even if they do not themselves have a disability). For example, it is illegal to discriminate against an employee because her husband has a disability.

Note: Federal employees and applicants are covered by the Rehabilitation Act of 1973, instead of the Americans with Disabilities Act. The protections are the same.

Disability Discrimination and Work Situations

The law forbids discrimination when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, and any other term or condition of employment.

Disability Discrimination and Harassment

It is illegal to harass an applicant or employee because he or she has a disability, had a disability in the past, or is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

Harassment can include, for example, offensive remarks about a person's disability. Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that aren't very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Disability Discrimination and Reasonable Accommodation

The law requires an employer to provide reasonable accommodations to employees and job applicants with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the work environment (or in the way things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, making the workplace accessible for wheelchair users or providing a reader or interpreter for someone who is blind or hearing impaired.

While the federal anti-discrimination laws don't require an employer to accommodate an employee because he or she must care for a family member with a disability, the Family and Medical Leave Act (FMLA) may require an employer to take such steps. The Department of Labor enforces the FMLA. For more information, call: 1-866-487-9243.

Disability Discrimination and Reasonable Accommodation and Undue Hardship

An employer doesn't have to provide an accommodation if doing so would cause undue hardship to the employer.

Undue hardship means that the accommodation would be too difficult or too expensive to provide, in light of the employer's size, financial resources, and the needs of the business. An employer may not refuse to provide an accommodation just because it involves some cost. An employer does not have to provide the exact accommodation the employee or job applicant wants. If more than one accommodation works, the employer may choose which one to provide.

Definition of Disability

Not everyone with a medical condition is protected from discrimination. In order to be protected, a person must be qualified for the job and have a disability as defined by the law.

A person can show that he or she has a disability in one of three ways:

- A person has a disability if he or she has a physical or mental condition that substantially limits a major life activity (such as walking, talking, seeing, hearing, or learning, or operation of a major bodily function).
- A person has a disability if he or she has a history of a disability (such as cancer that is in remission).
- A person has a disability if he or she is subject to an adverse employment action and is believed to have a physical or mental impairment that is not transitory (lasting or expected to last six months or less) and minor (even if he or she does not have such an impairment).

Disability-Related Questions and Medical Exams During Employment Application and Interview Stage

The law places strict limits on employers when it comes to asking any job applicants to answer disability-related questions, take a medical exam, or identify a disability.

For example, an employer may not ask a job applicant to answer disability-related questions or take a medical exam before extending a job offer. An employer also may not ask job applicants if they have a disability (or about the nature of an obvious disability). An employer may ask job applicants whether they can perform the job and how they would perform the job, with or without a reasonable accommodation.

Disability-Related Questions and Medical Exams After A Job Offer For Employment

After a job is offered to an applicant, the law allows an employer to condition the job offer on the applicant answering certain disability-related questions or successfully passing a medical exam, but only if all new employees in the same type of job have to answer the questions or take the exam.

Disability-Related Questions and Medical Exams For Persons Who Have Started Working As Employees

Once any employee is hired and has started work, an employer generally can only ask disability-related questions or require a medical exam if the employer needs medical documentation to support an employee's request for an accommodation or if the employer believes that an employee is not able to perform a job successfully or safely because of a medical condition.

The law also requires that employers keep all medical records and information confidential and in separate medical files.

Available Resources

In addition to a variety of formal guidance documents, EEOC has developed a wide range of fact sheets, question & answer documents, and other publications to help employees and employers understand the complex issues surrounding disability discrimination.

- Employer-Provided Leave and the Americans with Disabilities Act
- Recruiting, Hiring, Retaining, and Promoting People with Disabilities: A Resource Guide for Employers
- Pandemic Preparedness in the Workplace and the Americans with Disabilities Act
- Your Employment Rights as an Individual With a Disability
- Job Applicants and the ADA
- Understanding Your Employment Rights Under the ADA: A Guide for Veterans

- Questions and Answers: Promoting Employment of Individuals with Disabilities in the Federal Workforce
- The Family and Medical Leave Act, the ADA, and Title VII of the Civil Rights Act of 1964
- The ADA: A Primer for Small Business
- Your Responsibilities as an Employer
- Small Employers and Reasonable Accommodation
- Work At Home/Telework as a Reasonable Accommodation
- Applying Performance And Conduct Standards To Employees With Disabilities
- Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures
- The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work
- Employer Best Practices for Workers with Caregiving Responsibilities
- Reasonable Accommodations for Attorneys with Disabilities
- RESCINDED - How to Comply with the Americans with Disabilities Act: A Guide for Restaurants and Other Food Service Employers
- Final Report on Best Practices For the Employment of People with Disabilities In State Government
- Depression, PTSD, & Other Mental Health Conditions in the Workplace: Your Legal Rights
- *ABCs* of Schedule A Documents

The ADA Amendments Act

- Questions and Answers on the Final Rule Implementing the ADA Amendments Act of 2008
- Questions and Answers for Small Businesses: The Final Rule Implementing the ADA Amendments Act of 2008
- Fact Sheet on the EEOC's Final Regulations Implementing the ADAAA

Veterans with Disabilities

- EEOC Efforts for Veterans with Disabilities
- Understanding Your Employment Rights Under the Americans with Disabilities Act: A Guide for Veterans
- Veterans and the Americans with Disabilities Act: A Guide for Employers
- Hiring Veterans with Disabilities in the Federal Government
    - Tips for Applicants with Disabilities Applying for Federal Jobs
    - The *ABCs* of Schedule A

The Questions and Answers Series

- Use of Codeine, Oxycodone, and Other Opioids: Information for Employees
- How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed
- EEO Laws for Employees Affected by the Zika Virus
- Health Care Workers and the Americans with Disabilities Act
- Deafness and Hearing Impairments in the Workplace and the Americans with Disabilities Act

- Blindness and Vision Impairments in the Workplace and the ADA
- The Americans with Disabilities Act's Association Provision
- Diabetes in the Workplace and the ADA
- Epilepsy in the Workplace and the ADA
- Persons with Intellectual Disabilities in the Workplace and the ADA
- Cancer in the Workplace and the ADA
- The Application of Title VII and the ADA to Applicants or Employees Who Experience Domestic or Dating Violence, Sexual Assault, or Stalking
- Living with HIV Infection Your Legal Rights in the Workplace Under the ADA
- Helping Patients with HIV Infection Who Need Accommodations at Work

Mediation and the ADA

- Questions and Answers for Mediation Providers: Mediation and the Americans with Disabilities Act (ADA)
- Questions and Answers for Parties to Mediation: Mediation and the Americans with Disabilities Act (ADA)

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11.8: Video: Let’s End Ageism

It's not the passage of time that makes it so hard to get older. It's ageism, a prejudice that pits us against our future selves—and each other. Ashton Applewhite urges us to dismantle the dread and mobilize against the last socially acceptable prejudice. "Aging is not a problem to be fixed or a disease to be cured," she says. "It is a natural, powerful, lifelong process that unites us all."

https://www.youtube.com/watch?v=WfjzkO6_DEI

11.8: Video: Let’s End Ageism is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

11.9: Video: How Do You Define Yourself?

Born with a rare disorder that prevents her from gaining weight, Lizzie Velasquez has faced more negativity and bullying than most. Over time, she's developed a simple but effective coping mechanism. "Tell me those negative things," she says. "I'm gonna turn them around and use them as a ladder to climb up to my goals." In this funny, personal talk, Lizzie shares her story—and the tools to help people reject hateful perspectives while embracing self-definition.

https://www.youtube.com/watch?v=QzPbY9ufnQY

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11.10: Case Study: EEOC County of Fresno to Pay $50,000 to Settle Race and Age Discrimination Charges

County Failed to Promote Older Black Employee, Federal Agency Charged

FRESNO, Calif. – The County of Fresno will pay $50,000 and will provide other injunctive relief to settle a federal charge of race and age discrimination filed with the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

According to the EEOC, the County of Fresno's Department of Human Resources did not promote a qualified older black employee for two promotional opportunities.

The EEOC investigated the allegations and found reasonable cause to believe the County of Fresno violated Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967 (ADEA). This resolution was attained through the EEOC's voluntary pre-litigation administrative conciliation process.

Without admitting liability, the County of Fresno agreed to enter a two-year conciliation agreement with the EEOC. In addition to the monetary relief for the employee, the county will require its employees in the department of human resources to complete anti-discrimination training with a focus on Title VII and the ADEA.

"Taking into account a person's race or age when making employment-based decisions, has no place in today's workforce," said Patricia Kane, acting director of the EEOC's Fresno Local Office. "We commend the County of Fresno for resolving this charge and for putting in place measures that will have a positive impact throughout the entire human resources department within the county."

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov/racecolor-discrimination.

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11.11: Case Study: EEOC Sues L'Oreal For Age Discrimination and Retaliation

Federal Agency Says Cosmetics Giant Told Senior Director She Didn't Fit 'Youthful Image'

DALLAS - The U.S. Equal Employment Opportunity Commission (EEOC) announced today that it has filed an age discrimination and retaliation suit against L'Oreal U.S.A., Inc., claiming that the cosmetics giant discriminated against a former female Senior Director by subjecting her to a hostile work environment because of her age.

The EEOC says that a L'Oreal Senior Director was fired in retaliation on March 12, 2003 for having previously complained about discriminatory age comments to Human Resource personnel, in violation of the Age Discrimination in Employment Act of 1967 (ADEA). L'Oreal, based in Clichy, France, has over 50,000 employees and had sales of over $16 billion in 2002.

The EEOC asserts in its suit, Case No. 3:03-CV-2239-D, in U.S. District Court for the Northern District of Texas, that the former employee was subjected to discriminatory comments by a top executive about her age such as she was "too old to move to New York" and "too old for a V.P. sales position." The woman was also told that she needed a makeover "to fit in with L'Oreal's youthful image." The EEOC further charges that L'Oreal retaliated against the former Senior Director by allowing the newly hired Vice President of Sales to harass and abuse her as well as by terminating her after she reported these negative age comments to Human Resources.

"After years of hard work at L'Oreal, they told me I was too old to go to New York and too old to get a promotion," said Joyce Head. "They were wrong on both counts. I'm pleased that the EEOC is pursuing my case."

EEOC Dallas District Director Janet V. Elizondo said, "The growing retail trend of deliberately hiring only young, sexy employees is disturbing. Hiring for looks is a thoroughly antiquated idea, but too many companies are now still trying to ride that dinosaur."

The EEOC seeks injunctive relief, including training for employees and managers and the formulation of policies to prevent and correct workplace discrimination. The suit also seeks back pay, front pay, lost retirement and 401(k) benefits and liquidated damages for the former employee. The EEOC filed suit after exhausting its conciliation efforts to reach a voluntary pre-litigation settlement.

William C. Backhaus, EEOC Senior Trial Attorney, said: "This woman is a dynamo. She had sales of $30 million dollars last year. At times, she generated 70 percent of the business for her department. That she was denied employment opportunities solely because she lacked youthful beauty is the epitome of rank, overt age discrimination."

Robert A. Canino, Regional Attorney for the EEOC's Dallas District Office, added, "L'Oreal needs a makeover in its workplace practices. The EEOC will continue to fight the practice in the cosmetic industry of herding the older employees from the sales floor to the stockroom."

The EEOC is authorized by Congress to file suit against employers who violate Title VII of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, religion, sex (including sexual harassment or pregnancy), age, or national origin. Title VII also forbids retaliating against an employee for making a complaint. In addition to enforcing Title VII, the EEOC enforces the Age Discrimination in Employment Act, which protects workers age 40 and older from discrimination based on age; the Equal Pay Act of 1963, which prohibits gender-based wage discrimination; the Rehabilitation Act of 1973, which prohibits employment discrimination against people with disabilities in the federal sector; Title I of the Americans with Disabilities Act, which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; and sections of the Civil Rights Act of 1991. Further information about the Commission is available on the agency's website at www.eeoc.gov.

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11.12: Case Study: Arthur J. Gallagher to Pay $40,000 to Settle Religious and Disability Discrimination Lawsuit

Company Fired Employee Who Fasted for Lent and Was Regarded as Having a Disability, Federal Agency Charged

DENVER – Arthur J. Gallagher & Co. will pay $40,000 and provide other relief to settle an employment discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC), the federal agency announced today.

The EEOC charged that Arthur J. Gallagher & Co., a worldwide insurance brokerage and risk management firm, violated federal anti-discrimination laws when it fired a client underwriting associate in its Centennial, Colorado office in 2019.

According to the EEOC's lawsuit, filed last year, Gallagher knew of Yu Rex Noda's Christian religious practices, including fasting in conjunction with Lent. As set out in the EEOC's complaint, a "Termination Memo" Gallagher issued cited "fasting" and "meditating" among reasons for firing Noda.

The EEOC said that Gallagher's termination decision violated Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on religion. The EEOC charged that Gallagher also violated the Americans with Disabilities Act (ADA), which prohibits employment decisions that are made because a company regards an employee as having a disability.

The EEOC filed suit in U.S. District Court for the District of Colorado (Equal Employment Opportunity Commission v. Arthur J. Gallagher & Co., Civil Action No. 1:20-cv-3421-RBJ) after first attempting to reach a pre-litigation settlement through its conciliation process.

Under the two-year consent decree resolving the EEOC's claims, Gallagher will pay $40,000 to the fired employee, provide anti-discrimination training to managers in its Midwest region, and provide annual reporting to the EEOC. Senior U.S. District Judge R. Brooke Jackson has approved the decree, and the federal district court will retain jurisdiction to enforce it.

"Employers cannot discriminate based on an employee's religion or because the employer disapproves of an employee's individual religious beliefs or practices," said Regional Attorney Mary Jo O'Neill of the EEOC's Phoenix District Office. "Employers need to be respectful of employees' religious beliefs and practices and provide any needed reasonable accommodations to those employees unless the employer can prove an undue hardship."

District Director Elizabeth Cadle of the Phoenix District Office said, "The ADA also prohibits discrimination because an employer regards an employee as having a disability. Congress passed the ADA knowing that stereotypes about disabilities are themselves a barrier to equal employment opportunities, and the law prevents employment discrimination based on such myths, fears, and stereotypes."

The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov.

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11.13: Prohibited Employment Policies/Practices

Under the laws enforced by EEOC, it is illegal to discriminate against someone (applicant or employee) because of that person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to retaliate against a person because he or she complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

The law forbids discrimination in every aspect of employment.

The laws enforced by EEOC prohibit an employer or other covered entity from using neutral employment policies and practices that have a disproportionately negative effect on applicants or employees of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), or national origin, or on an individual with a disability or class of individuals with disabilities, if the polices or practices at issue are not job-related and necessary to the operation of the business. The laws enforced by EEOC also prohibit an employer from using neutral employment policies and practices that have a disproportionately negative impact on applicants or employees age 40 or older, if the policies or practices at issue are not based on a reasonable factor other than age.

Job Advertisements

It is illegal for an employer to publish a job advertisement that shows a preference for or discourages someone from applying for a job because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

For example, a help-wanted ad that seeks "females" or "recent college graduates" may discourage men and people over 40 from applying and may violate the law.

Recruitment

It is also illegal for an employer to recruit new employees in a way that discriminates against them because of their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

For example, an employer's reliance on word-of-mouth recruitment by its mostly Hispanic workforce may violate the law if the result is that almost all new hires are Hispanic.

Application and Hiring

It is illegal for an employer to discriminate against a job applicant because of his or her race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. For example, an employer may not refuse to give employment applications to people of a certain race.

An employer may not base hiring decisions on stereotypes and assumptions about a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

If an employer requires job applicants to take a test, the test must be necessary and related to the job and the employer may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, or individuals with disabilities. In addition, the employer may not use a test that excludes applicants age 40 or older if the test is not based on a reasonable factor other than age.

If a job applicant with a disability needs an accommodation (such as a sign language interpreter) to apply for a job, the employer is required to provide the accommodation, so long as the accommodation does not cause the employer significant difficulty or expense.

Background Checks

See "Pre-Employment Inquiries" below.

Job Referrals

It is illegal for an employer, employment agency, or union to take into account a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information when making decisions about job referrals.

Job Assignments and Promotions

It is illegal for an employer to make decisions about job assignments and promotions based on an employee's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information. For example, an employer may not give preference to employees of a certain race when making shift assignments and may not segregate employees of a particular national origin from other employees or from customers.

An employer may not base assignment and promotion decisions on stereotypes and assumptions about a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information.

If an employer requires employees to take a test before making decisions about assignments or promotions, the test may not exclude people of a particular race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), or national origin, or individuals with disabilities, unless the employer can show that the test is necessary and related to the job. In addition, the employer may not use a test that excludes employees age 40 or older if the test is not based on a reasonable factor other than age.

Pay and Benefits

It is illegal for an employer to discriminate against an employee in the payment of wages or employee benefits on the basis of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information. Employee benefits include sick and vacation leave, insurance, access to overtime as well as overtime pay, and retirement programs. For example, an employer many not pay Hispanic workers less than African-American workers because of their national origin, and men and women in the same workplace must be given equal pay for equal work.

In some situations, an employer may be allowed to reduce some employee benefits for older workers, but only if the cost of providing the reduced benefits is the same as the cost of providing benefits to younger workers.

Discipline and Discharge

An employer may not take into account a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information when making decisions about discipline or discharge. For example, if two employees commit a similar offense, an employer may not discipline them differently because of their race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

When deciding which employees will be laid off, an employer may not choose the oldest workers because of their age.

Employers also may not discriminate when deciding which workers to recall after a layoff.

Employment References

It is illegal for an employer to give a negative or false employment reference (or refuse to give a reference) because of a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability or genetic information.

Reasonable Accommodation and Disability

The law requires that an employer provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause significant difficulty or expense for the employer.

A reasonable accommodation is any change in the workplace (or in the ways things are usually done) to help a person with a disability apply for a job, perform the duties of a job, or enjoy the benefits and privileges of employment.

Reasonable accommodation might include, for example, providing a ramp for a wheelchair user or providing a reader or interpreter for a blind or deaf employee or applicant.

Reasonable Accommodation and Religion

The law requires an employer to reasonably accommodate an employee's religious beliefs or practices, unless doing so would cause difficulty or expense for the employer. This means an employer may have to make reasonable adjustments at work that will allow the employee to practice his or her religion, such as allowing an employee to voluntarily swap shifts with a co-worker so that he or she can attend religious services.

Training and Apprenticeship Program

It is illegal for a training or apprenticeship program to discriminate on the basis of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information. For example, an employer may not deny training opportunities to African-American employees because of their race.

In some situations, an employer may be allowed to set age limits for participation in an apprenticeship program.

Harassment

It is illegal to harass an employee because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information.

It is also illegal to harass someone because they have complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

Harassment can take the form of slurs, graffiti, offensive or derogatory comments, or other verbal or physical conduct. Sexual harassment (including unwelcome sexual advances, requests for sexual favors, and other conduct of a sexual nature) is also unlawful. Although the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal if it is so frequent or severe that it creates a hostile or offensive work environment or if it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Harassment outside of the workplace may also be illegal if there is a link with the workplace. For example, if a supervisor harasses an employee while driving the employee to a meeting.

Read more about harassment.

Terms and Conditions of Employment

The law makes it illegal for an employer to make any employment decision because of a person's race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age (40 or older), disability, or genetic information. That means an employer may not discriminate when it comes to such things as hiring, firing, promotions, and pay. It also means an employer may not discriminate, for example, when granting breaks, approving leave, assigning work stations, or setting any other term or condition of employment - however small.

Pre-employment Inquiries (General)

As a general rule, the information obtained and requested through the pre-employment process should be limited to those essential for determining if a person is qualified for the job; whereas, information regarding race, sex, national origin, age, and religion are irrelevant in such determinations.

Employers are explicitly prohibited from making pre-offer inquiries about disability.

Although state and federal equal opportunity laws do not clearly forbid employers from making pre-employment inquiries that relate to, or disproportionately screen out members based on race, color, sex, national origin, religion, or age, such inquiries may be used as evidence of an employer's intent to discriminate unless the questions asked can be justified by some business purpose.

Therefore, inquiries about organizations, clubs, societies, and lodges of which an applicant may be a member or any other questions, which may indicate the applicant's race, sex, national origin, disability status, age, religion, color, or ancestry if answered, should generally be avoided.

Similarly, employers should not ask for a photograph of an applicant. If needed for identification purposes, a photograph may be obtained after an offer of employment is made and accepted.

Pre-employment Inquiries and:

- Race
- Height & Weight
- Financial Information
- Unemployed Status
- Background Checks
- Religious Affiliation Or Beliefs
- Citizenship
- Marital Status, Number Of Children
- Gender
- Disability
- Medical Questions & Examinations

Dress Code

In general, an employer may establish a dress code that applies to all employees or employees within certain job categories. However, there are a few possible exceptions.

While an employer may require all workers to follow a uniform dress code even if the dress code conflicts with some workers' ethnic beliefs or practices, a dress code must not treat some employees less favorably because of their national origin. For example, a dress code that prohibits certain kinds of ethnic dress, such as traditional African or East Indian attire, but otherwise permits casual dress would treat some employees less favorably because of their national origin.

Moreover, if the dress code conflicts with an employee's religious practices and the employee requests an accommodation, the employer must modify the dress code or permit an exception to the dress code unless doing so would result in undue hardship.

Similarly, if an employee requests an accommodation to the dress code because of his disability, the employer must modify the dress code or permit an exception to the dress code, unless doing so would result in undue hardship.

Constructive Discharge/Forced to Resign

Discriminatory practices under the laws EEOC enforces also include constructive discharge or forcing an employee to resign by making the work environment so intolerable a reasonable person would not be able to stay.

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11.14: Case Study: Resources for Human Development Settles EEOC Disability Suit for $125,000

Court Upholds Severe Obesity as an ADA-Protected Impairment

NEW ORLEANS – Resources for Human Development, Inc. (RHD), doing business as Family House of Louisiana, a treatment facility for chemically dependent women and their children, will pay $125,000 to settle a disability discrimination suit filed in September 2010 by the U.S. Equal Employment Opportunity Commission (EEOC), the agency announced today.

The court-approved settlement resolves the charge of Lisa Harrison, who worked as a prevention/intervention specialist at RHD's Family House facility in Louisiana from 1999 until she was fired in September of 2007. In its suit, the EEOC charged that RHD violated the Americans With Disabilities Act (ADA) when it fired Harrison because of her disability, severe obesity, even though she was able to perform the essential functions of her job. Before the EEOC filed suit, Harrison died.

During the litigation, the court denied both of the defendant's motions for summary judgment in an order holding that severe obesity is an impairment within the meaning of the ADA. *EEOC v. Resources for Human Development, Inc.*, --- F. Supp. 2d ----, 2011 WL 6091560 (E.D. La. Dec. 2011) ("severe obesity qualifies as a disability under the ADA"). The court concluded that severe obesity may qualify as a disability regardless of whether it is caused by a physiological disorder, rejecting RHD's argument to the contrary.

The EEOC had offered the expert testimony of a renowned obesity researcher that Harrison's obesity was the result of a physical disorder or disease, and was not caused by lack of character or willpower. But the court reasoned that "neither the EEOC nor the Fifth Circuit have ever required a disabled party to prove the underlying basis of their impairment."

"All people with a disability who are qualified for their position are protected from unlawful discrimination," said EEOC General Counsel David Lopez. "Severe obesity is no exception. It is important for employers to realize that stereotypes, myths, and biases about that condition should not be the basis of employment decisions."

Jim Sacher, regional attorney of the EEOC's Houston District Office, which includes the New Orleans Field Office in its jurisdiction, added, "Employers cannot rely on unfounded prejudices and assumptions about the capabilities of severely obese individuals. Despite performing her job for years, Ms. Harrison was terminated without warning and without any evidence that she could not perform the essential functions of her position. This case highlights the fact that severely obese people who can do their jobs are every bit as protected by the ADA as people with any other qualifying disability. Any notion that these individuals are not protected, based on the wrongheaded idea that their condition is self-inflicted, is simply wrong and without legal basis."

Under the court-ordered consent decree settling the suit, which was entered on April 10, 2012, by Judge Ivan Lemelle (EEOC v. Resources for Human Development, Inc., d/b/a Family House of Louisiana, Case No. 2:10-cv-03322 in U.S. District Court for the Eastern District of Louisiana), the company will provide annual training on federal disability law to all human resources

personnel and corporate directors of RHD nationwide. RHD will also report to the EEOC for three years on all complaints of disability discrimination and all denials of a request for reasonable accommodation of a disability. The nationwide training and reporting will benefit RHD's employees in its more than 160 programs, as well as applicants who seek employment with the company. RHD will also name a children's room at the Family House facility, and permanently install a memorial plaque, in honor of Harrison, who taught at the facility for almost eight years.

Harrison's sisters, Dory Davis and April Duong, said about their sister, "She worked tirelessly for the Family House and was loved by everyone whose lives she touched. Our hope is that this case will prevent other employees from having to endure the hardship that Lisa experienced."

According to company information, Family House Louisiana is a long-term residential treatment facility for chemically dependent women and their children. RHD, a non-profit Pennsylvania corporation doing business in Louisiana, has many facilities and employs over 4,000 people, and oversees more than 160 programs in 14 states.

The EEOC was represented in the case by trial attorneys Tanya L. Goldman, Gregory T. Juge, and Camille A. Monahan.

The EEOC enforces federal law prohibiting employment discrimination. Further information is available on its website at www.eeoc.gov.

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Chapter 12: Diversity in Global Context

12.1: Global Human Resources

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12.1.1: Why It Matters: Global Human Resources

Why learn about opportunities and challenges of managing human resources in the global business environment?

A large American hotel company, LMN Hotels, recently decided to expand their hotel chain into Europe. They just completed an acquisition of a hotel chain in Germany. They now own twenty hotels in Germany which they plan to redesign to embody their company's brand. During the acquisition, 65% of the German hotel chain's staff left the company. Therefore, LMN Hotels needs to hire a new workforce to fill the hundreds of positions currently vacant. Since this international acquisition is foreign territory (both literally and physically) LMN's human resources team has a lot to plan and execute.

Working on a global scale can pose many challenges for a company. LMN's HR Team begins to compile a list of tasks they need to complete in order to successfully open up their new hotels in Germany. Here are a few of the things they need to consider and accomplish:

- How do we address the language barrier? Do we have employees that speak German? Are their translation services or employees from the acquired company that can speak English?
- Who will we send to oversee the renovations and redesign in the German hotels?
- How can we effectively hire new staff members to fill the current open positions?
- How do we train the new staff members and the acquired staff members to embody company brand and meet their job expectations?

These questions are just the tip of the iceberg. International Human Resource Managers have a challenging and demanding role. This module will discuss the opportunities and challenges of managing human resources in the global business environment.

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12.1.2: Introduction to the Global Environment

What you'll learn to do: Identify the benefits of a geographically dispersed workforce

Developing a strong, collaborative team requires a lot of time and energy. Since personality and cultural differences are more pronounced when working with people from other countries, it is important to foster a global mindset in the workplace. International diversity can be a great tool when celebrated and incorporated in the workplace. Diversity provides new and different perspectives and can greatly improve the innovation and collaboration of international companies.

This section will explore how global HR managers can nurture global leadership and international diversity in order to develop strong global teams.

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12.1.3: Global Human Resources Management

Learning Objectives

1. Describe the role of a global human resource manager

HR managers are responsible for the hiring, onboarding, training, termination, and legal compliance of company employees. Global HR managers are responsible for the same important tasks, but on an international scale. Anytime a company expands internationally, they are faced with a number of challenges. A strong global human resources team is a vital component of international expansion.

WATCH IT

Before we explore the important components of Global Human Resources further, check out the video below for a preview.

A YouTube element has been excluded from this version of the text. You can view it online here: https://www.youtube.com/watch?v=r1WzcxtEUps&feature=youtu.be.

https://www.youtube.com/watch?v=r1WzcxtEUps

You can also download a transcript for the video "International Human Resources Management" here.

Some people have the misconception that HR is similar in every country. While there are similarities from one country to the next, there are a number of cultural differences that need to be considered. Deciphering cultural differences requires research and experience in international business ventures. global HR managers are well versed in cultural differences and play an important role in bridging the cultural gaps discovered through international expansion. Let's review some key components of HR and how they operate on a global scale.

Recruitment and Staffing

Whether a company is looking to hire domestically or internationally, the goal is always to find the most qualified candidate to fill the position. Understanding the job description and the desired skill set is essential to finding the right candidate for the job. It is important for HR to understand any unique or different job expectations for international positions. In addition, it is important to keep in mind that job experience and education may look very different from one culture to the next. It is beneficial for the human resources team to be well versed in cultural differences so they are able to fully understand the backgrounds and experiences of their candidates.

Training

Training is required for all employees to fully understand their job functions and company policies and procedures. While it is always important to maintain consistency with onboarding new employees, it is especially important when operating on a global scale. To ensure the same message is delivered to all employees, global HR managers should use the same onboarding process at every company location. Certain things may need to be considered, like whether or not a translator is needed. However, the more consistent the onboarding process is throughout the company, the more likely the company will be able to maintain and grow its brand. When inconsistent policies and procedures are presented throughout the company, their brand and reputation may suffer.

Legal Compliance

Legal compliance is a huge responsibility for human resources, both domestically and internationally. To avoid legal trouble, it is critical that HR understands, abides by, and helps the company to enforce all legal requirements. Laws differ from one country to the next and therefore, an important role of global HR managers is to ensure all laws and regulations are followed in every country in which the company is operational.

Employee Development

Human resources aids in employee development by providing opportunities for employees to further their knowledge and education. Companies that operate on an international scale are able to use their international locations as great training and development opportunities for their employees from other countries. Training internationally can provide a unique experience for employees to learn about cultural differences, diversity, and differing perspectives.

Global HR managers are also responsible for ensuring employees who are working internationally have all the resources they need to successfully transition into a new country and culture. Since global HR managers understand cultural and legal differences, they are well equipped to help relocated employees settle into their new role.

Compensation

As we discussed earlier in this section, following laws and regulations is extremely important in order to avoid paying fines or facing legal trouble. Compensation, including salary, health benefits, vacation time, etc. may differ from one country to the next. It is vital that HR be aware of—and abide by—all work and compensation laws for each and every country (or state) their company operates in.

PRACTICE QUESTION

Which of the following categories is NOT a traditional responsibility of a Global Human Resources Manager?

- Hiring and onboarding new employees.
- Understanding laws and regulations.
- Increasing sales numbers.
- Training employees.

Answer

Increasing sales numbers. A Global Human Resources Manager is responsible for the same important tasks as a traditional Human Resources Manager but on a global scale. Meeting sales goals is not a traditional assignment for Human Resources.

Strategic Benefits

There are a number of strategic benefits to utilizing global HR managers. Consistency, structure, and control are three of these benefits. Having HR maintain consistency throughout the company helps to solidify a company's brand and operations. This also helps lay a strong foundation for the structure of the organization as a whole. If each location is created using a similar structure and alignment, it helps to ensure a company's goals and objectives are at the forefront of expansion. Global HR Managers are also able to maintain control of company operations. If every location's HR department acted independently, consistency and control would be a challenge to maintain. By having Global HR Managers to oversee the company in its entirety, the company is better able to maintain control of their international locations and overall company brand, policies, and procedures.

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12.1.4: Global Leadership

Learning Objectives

1. Describe the importance of nurturing global leadership

Strong leadership is a cornerstone of all successful companies. Strong global leadership begins with a global mindset. A global mindset is "characterized by (1) tolerating, accepting, and understanding diversity with an inclusive mindset; (2) a broad and universal perspective of business; and (3) thinking openly, free from cognitive cobwebs." People with a global mindset are able to keep an open mind around cultural nuances and make thoughtful decisions with these differences in mind. They are inclusive and understand the benefits of diversity. Global mindset is the foundation of all strong global leaders, as it lays the groundwork for cultural acceptance and understanding.

Mindfulness

Mindfulness is a key component to a global mindset and global leadership. Mindfulness is, "a state of mind characterized by heightened awareness of self and the surrounding environment, and to be non-evaluative and nonjudgmental in experiencing the present." Strong leaders need to be aware of their surroundings and understanding of those they interact with. Mindfulness is an invaluable skill for leaders to have in their toolkit. Mindfulness and a global mindset work together to help form a strong global leader. Global leaders interact with a large number of people across multiple cultures. Therefore, in order for global leaders to be successful, they need to be mindful of their surroundings and view the world through a global mindset.

Employee Development

In today's day and age, international expansion of many companies is becoming the norm. Employees who want to expand their horizons, and gain valuable experience and insight into other cultures may consider taking company assignments in foreign countries. So, how do these employees prepare to be strong global leaders? Training is the best way to nurture global leaders and ensure they have all the knowledge and tools necessary to be successful. International companies who are invested in training global leaders will rapidly reap the benefits.

A Shrinking World

Since technology continues to shrink the world around us, global leaders will continue to play a key role in international expansion. Strong global leaders are able to keep track of cultural differences, as well as compliance and legal concerns, that may differ from one country to the next. Equally as important, successful global leaders are able to seamlessly infuse differing cultures, languages, and personalities to form one strong and cohesive team. When an international company has a unified team, they are better able to quickly and effectively expand. A strong international team also contributes to productivity and profit. If a company has strong global leaders, they are better able to grow and unify the company. Therefore, all international companies should strive to nurture global leadership on their teams.

PRACTICE QUESTION

Which of the following skills work together to help develop a strong global leader?

- A global mindset and bilingual abilities.
- Mindfulness and experience.
- Bilingual abilities and a diverse background.
- Mindfulness and a global mindset.

Answer

Mindfulness and a global mindset work together to help form a strong global leader. Global leaders interact with a large number of people across multiple cultures. Therefore, in order for global leaders to be successful, they need to be mindful of their surroundings and view the world through a global mindset.

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12.1.5: International Diversity

1.

Learning Objectives

1. Describe the benefits of international diversity
2. Describe the challenges of international diversity

Diversity in the workplace is extremely helpful in presenting differing viewpoints and opinions. However, diversity can also be a challenge as differing personalities may clash and create conflict. International businesses are presented with additional challenges when navigating diversity, including language barriers and cultural differences. So, if diversity presents a number of challenges, how beneficial can it be? The answer is, it can be very beneficial—although diversity presents challenges, the benefits outweigh them. Let's dive into some of the benefits and challenges of international diversity.

Benefits

Each person's experiences and cultural backgrounds influence the way in which they see the world. When environments, such as the workplace, bring together a wide variety of individuals, a wide variety of viewpoints are introduced. When diverse groups of individuals work together, they challenge their peers and coworkers to view their world from differing perspectives. This can open people up to new ideas and ways of doing things. Diversity helps to spark innovation by combining a large range of experiences, cultures, and areas of expertise.

Companies that value and instill diversity in their organization are more attractive to job applicants. A survey conducted by GlassDoor found that two-thirds of people consider diversity important when deciding where to work. Therefore, diverse companies have access to a larger talent pool since they appeal to a broader group of applicants. Especially in a global marketplace where recruiting efforts are more competitive, a diverse workplace can help to ensure companies are attracting and hiring the right candidates for the job. In addition to helping to hire quality employees, a diverse workplace also helps retain them. Employees who work in diverse work environments often feel a stronger sense of loyalty to their company because they feel valued and understood.

International companies can greatly benefit from their local employees in foreign countries. These international employees have valuable insight and knowledge about their home country's market and culture. The information international employees can provide to their companies can help make them more competitive in foreign markets and therefore more profitable.

PRACTICE QUESTION

Which of the following options does NOT explain how international companies benefit by hiring local employees in foreign countries?

- Local employees do not cost as much as international ones.
- Local employees speak the native language.

- Local employees provide insight into their home country's economy.
- Local employees understand indigenous culture and traditions.

Answer

Local employees do not cost as much as international ones. The pay of international employees differs from one company and one country to the next. In some cases, employees are hired using the company's home country as the basis for compensation. However, in other situations, the international location is considered when determining compensation. Therefore, it is not accurate to say that local employees cost less than hiring international ones.

Challenges

Whenever differing personalities and cultures are working together, there are bound to be some challenges. Cultural differences especially can be difficult to understand and overcome.

Differences in business etiquette and nonverbal communication account for the majority of culturally related challenges. Let's take a look at a few primary areas of difference and potential miscommunication:

1. **Clothing:** managing the first impression
2. **Conversation:** appropriate business and ice-breaker conversation
3. **Greeting:** how people greet each other differs from one culture to the next. Local customs and expectations, including greeting style—the distinctions that inspired the title of the best-selling guide to business etiquette and practices, *Kiss, Bow or Shake Hands*
4. **Forms of address:** level of formality and use of titles and degrees
5. **Time:** interpretations of "on time," may vary on the country you're in. Additionally, the length of average workdays may be different, or how long people take for lunch may differ.
6. **Space:** Personal space and eye contact are other examples of cultural nuances that need to be considered when engaging in international business.

Navigating these differences may pose a challenge, but is an important part of creating a strong and unified team.

Language barriers can also present challenges. When the workplace has employees who speak a variety of languages, clear and concise communication can be difficult to attain. Even in an international setting where everyone is capable of speaking the same language, certain language barriers may present themselves through differing cultural terminologies, idioms, and slang terms. The way in which employees present their message is also different from one culture to the next. Some may prefer sending emails, whereas others require face-to-face conversations in certain situations. Understanding these types of language and cultural differences can help employees to maintain a respectful and professional work environment.

PRACTICE QUESTION

Marco, who lives in Washington, DC, is working on a project with his colleague, Aislinn, an American who has been living in Japan for 20 years. The two find they have nearly opposite schedules, given the 14-hour time difference. What challenge of international diversity are Marco and Aislinn facing?

- Collaborating
- Language barriers
- Cultural differences
- Innovating

Answer

Collaborating on an international scale can be a challenge, especially if there are drastic cultural differences, time changes, or significant language barriers on the team.

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12.1.6: Introduction to Global Employee Engagement

What you'll learn to do: Describe ways to engage a global team

As we discussed in a previous module, employee engagement is extremely helpful in boosting company productivity and sales. However, what Americans perceive to be enticing and engaging may not be received the same way in other cultures. Global teams encompass a wide variety of cultural differences, and in order to engage employees throughout an entire international company, it is important to understand what motivates and excites them. Other key components like effective communication and a sense of trust are invaluable in building a highly engaged team. Teams that feel valued and trusted are more likely to perform at a higher level. Understanding how to bridge cultural differences and engage all team members is an important skill for global HR managers to possess.

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12.1.7: Cultural Differences

Learning Objectives

1. Discuss cultural differences on a global team

Some cultural differences are more obvious than others. For example, if someone speaks a different language, it is obvious there are going to be some communication challenges. However, there are a larger number of more subtle cultural differences that can be harder to identify and understand. According to Art Markman's article for *Harvard Business Review*, there are three main ways to identify cultural differences on a global team: learning, listening, and asking.

Before we get started, take a moment to think about the following question. What do you think the three ways are?

PRACTICE QUESTION

What are the three main ways to identify cultural differences on a global team?

- Observe, evaluate, engage.
- Research, review, emerge.
- Connect, communicate, interact.
- Learn, listen, ask.

Answer

Learn, listen, ask. It is important to learn about the cultures of countries you will be working in prior to your arrival. It is also necessary to observe and listen to the social and physical cues of others by reading the room. Lastly, if you do not know something, ask to get clarification. These three steps help to not only identify, but also to navigate cultural differences.

Learn

If you know ahead of time you will be traveling to a certain part of the world, it is important to do your research. It would be a challenge to memorize the cultural differences of every country, however, taking the time to learn and study cultures you plan to conduct business in, can help make your business ventures more lucrative.

Listen

When interacting with new people, especially from different cultures, it is important to read the room. If people seem upset or confused during your interaction with them, that is a good indicator that something may not have gone according to plan. If you get the sense that something during your interaction is off, work to understand what you may have done that was

interpreted differently than you intended. You can also listen to changes in the other person's tone or message to determine if you need to readdress something.

Ask

If you don't know something, ask! In an international business setting, cultural differences may be hard to decipher. If you suspect something is off, it is okay to ask questions to understand the misstep and get back on track. Better yet, try to find an ally from the country you are visiting who can explain when and how you may have made a cultural faux pas. If you are willing to ask questions to improve the way you interact with others, you are more likely to earn their trust and respect. Putting forth effort to better understand others and their culture, is a great way to build healthy and long-lasting relationships.

EXAMPLES OF CULTURAL DIFFERENCES

Now that we have established ways to navigate cultural differences, let's explore some examples of cultural differences from around the world.

Body Language

Certain forms of body language and hand gestures mean different things in different cultures. For example, in Nigeria, a thumbs up is considered extremely offensive. In Bulgaria, people shake their heads to show their agreement as opposed to nodding their head to indicate agreement like they do in America.

Greetings

When meeting individuals from other countries, be prepared for cultural differences in the way they greet people. In some countries, bowing is the preferred greeting (e.g., Japan), whereas in other countries, a firm handshake is preferred (e.g., America). In Argentina, professionals greet people with a kiss on the right cheek. This welcoming kiss is intended to show respect.

Workweek

Workweeks may look extremely different from one country and culture to the next. For example, in Israel, the workweek goes from Sunday through Thursday to allow people to observe the Shabbat on Friday and Saturday. In Sweden, daily coffee breaks called "fika" are taken every day at 9am and 3pm to promote team building and to provide a chance for employees to recharge.

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12.1.8: Social Distance

Learning Objectives

1. Describe the causes of social distance

Tsedal Neeley, author of The Language of Global Success, defines social distance as, "the degree of emotional connection among team members." Teams that work in the same office space typically experience low social distance as they have daily opportunities to interact with, and work alongside, their coworkers. However, when operating on an international scale, social distance will naturally increase. High social distance can complicate relationships and create challenges for interactions amongst coworkers. Global Human Resources Managers can help to alleviate the complications caused by social distance by understanding and addressing the root of the problem. Neeley created a SPLIT framework that addresses the five root causes of social distance. These root causes include the following five items:

1. Structure
2. Process
3. Language
4. Identity
5. Technology

PRACTICE QUESTION

Which of the following correctly defines social distance in the workplace?

- The degree of emotional connection among team members.
- The different social customs and traditions across the globe.
- The geographical distance between societies.
- A challenge associated with team-building on an international scale.

Answer

The degree of emotional connection among team members. Typically, social distance is low in office settings where employees work alongside each other on a daily basis. However, if a company works remotely, social distance may be higher since a virtual workspace may provide fewer opportunities for interactions amongst co-workers.

Structure

The structure of an organization can create social distance. If a majority of employees are stationed at one location, there may be a perceived power imbalance that the larger office has more authority. Smaller locations may feel as though their voices are not heard or that they are under-appreciated. The larger office may feel as though they carry the weight of the team and that the smaller teams do not contribute their fair share.

To help alleviate social distance in regards to structure, managers need to relay a unified message that all team members are working towards the same goals and objectives. Managers also need to implement a zero-tolerance policy for cultural insensitivity.

Process

Differences in processes can create tension and social distance. Creating a time to discuss processes and provide feedback, is important to address any tension points. There may be differences in cultural practices that impact company processes. For example, if one location only checks their emails once a day, they may be hindering the work of other locations that check their email frequently.

Language

Language is an obvious barrier to social distance. Even when a common language is spoken, the fluency in which team members can speak it may differ greatly. Providing enough time for everyone to speak and ensuring the fluent speakers do not dominate the conversation, is a way to alleviate some of the tension created through language barriers. Managers should also provide a time for everyone to contribute their ideas and ensure they are practicing active listening skills.

Identity

Understanding the identity and cultural differences of others, is important to building relationships with your coworkers. Strong relationships allow you to learn from your peers and effectively collaborate with them to complete important projects and job functions. Unstructured time to discuss informal topics such as family, hobbies, etc. is important in getting to know the team. Providing a time for employees to discuss these topics is a great way to foster team-building and camaraderie.

Technology

Technology can both help and hinder social distance. Platforms like video conferencing, audio conference calls, and email are all great ways to promote teamwork and collaboration. However, certain communication tools like email may make tone and inflection hard to decipher. We will discuss technology further in the next section.

PRACTICE QUESTION

Tianna uses her company's internal chat feature as her primary method of communication with her colleagues. She sends messages throughout her workday, and often sends multiple messages if colleagues don't respond in what she thinks is a timely manner. This frustrates her international coworker Álvaro because it makes it extremely challenging for him to parse through her messages and determine which are resolved and which still need answers. The overload of communication hinders the team's productivity and increases social distance. Which of the following is the root cause of the social distance?

- Technology
- Process
- Structure
- Language

Answer

Process. In this case, there are differing opinions about proper chat procedures. Tianna and Álvaro should discuss the process and find a way to change it to better meet their needs.

Although social distance can complicate a global working environment, it is a manageable challenge. It is important for teams to be aware of social distance and identify problem areas that need to be addressed. Being considerate of the cultures and preferences of others on the team is the first step in creating an inclusive team with low social distance.

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12.1.9: Trust Across Cultures

Learning Objectives

1. Describe how leaders can build trust across cultures

Why Does Trust Matter?

Without trust we don't truly collaborate; we merely coordinate or, at best, cooperate. It is trust that transforms a group of people into a team.

—Stephen R. Covey from his book, *The Speed of Trust*

Trust is an essential part of a successful team. Without trust, it is impossible for a company to reach its maximum potential. Building trust requires time and patience but is definitely worth the effort. Many teams that work together every day can build trust organically. However, when working with countries and cultures from around the world, building trust may require more effort. Since many international companies operate remotely, and meet with their teams through virtual communication platforms, leaders may not have daily interactions with their team. Therefore, building trust may take a long time. Trust must be earned over time through genuine and supportive words and actions. Most importantly, once trust has been established, it is essential for leaders to continue to nurture and develop trust in their relationships with their team.

How to Build Trust Across Cultures

First and foremost, to successfully earn trust, managers must believe in the importance of building trust. If managers do not value trust, they will never put forth enough effort to establish it. There are multiple ways to establish and earn trust. It is important to understand that trust-building looks different from one relationship to the next and may require differing amounts of time and energy to establish it. Building trust requires patience and understanding and is not something that can be built overnight. Understanding your employees' and colleagues' cultures and backgrounds can help managers gain insight into how others build trust. A 2019 article from the Harvard Business Review suggests asking the following questions to gain insight into the trust cultures of other countries:

1. How trusting is it?
2. How performance-oriented is it?
3. How hierarchical and autocratic is it?
4. How do people in that culture build trust themselves?

Having an open dialogue around trust can help managers to better understand how to establish trust in their teams. However, it is important to know when and where to have these conversations. In some cultures, these types of conversations should be held in a private, one-on-one setting. In other cultures, employees are not comfortable discussing their supervisors, as they follow a hierarchical approach to business.

There are two key foundations to building trust across cultures: results and character. For example, when someone performs their job duties well and yields great results, people are more trusting of them. In other cultures, a person's character is valued above their performance. Understanding different cultures, and their definition and understanding of trust, is the first step in building it.

PRACTICE QUESTION

Which of the following correctly identifies the two key foundations of building trust across cultures?

- Age and reputation.
- Results and character.
- Honesty and transparency.
- Personality and experiences.

Answer

Results and character. Individuals who get results are considered more trustworthy than those who fall short. Some people value character above results and decide whether or not a person is trustworthy based primarily on their character.

Additional Strategies

Recognition

It is important to give people credit for their work. Managers who recognize their team for their efforts are able to build rapport and trust with their teams. However, it is important to understand how other cultures receive recognition. For example, some people may not be comfortable getting recognized in a group setting. To avoid making people feel uncomfortable in these cases, managers can praise groups for their efforts in a public setting but provide individual recognition in private.

Respect

Respect is a key component to trust and should be highly valued. Managers can foster respect through transparency and strong expectations. To promote a respectful work environment, managers should prohibit disrespectful behavior and help to bridge the gap between cultural misunderstandings.

Consistency

Trust takes a long time to establish and only a moment to break. Consistency is key to maintaining and nurturing trust. Managers should handle similar situations in similar ways. Consistency helps to build trust and respect because it allows employees to predict the actions of their managers.

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12.1.10: Global Communication

Learning Objectives

1. Describe how advances in technology have had an effect on virtual teams
2. Identify methods of effective communication in global workforce

Communication can be a challenge in any work environment. Even if people speak the same language, personality and communication styles can differ greatly. Now consider the additional challenges that present themselves when communicating with people from other cultures. Not only are there bound to be language barriers, but there are also going to be cultural differences to navigate. Understanding cultural differences is the first step in effectively communicating with people and teams from around the world. In addition to navigating cultural differences, there are other strategies and techniques companies can use to effectively communicate across their global workforce.

Technology

Technology has drastically shrunk the world, providing instant accessibility to countries around the globe. Thanks to technological advances, companies have been able to expand their businesses on a global scale, while still being able to manage company operations remotely. Technology can also help to promote effective communication on international teams. While audio conference calls are still common in today's workforce, technology also allows companies to utilize video conference calls to help teams put names to faces and build strong relationships. Email, as well as collaborative work platforms like Google, allow global workforces to instantly send and receive messages and work alongside each other, even from thousands of miles away.

WATCH IT

Take a look at this video about optimizing virtual teams, and then keep on reading!

A YouTube element has been excluded from this version of the text. You can view it online here: https://www.youtube.com/watch?v=0SzWrazgt7Y&feature=youtu.be.

https://www.youtube.com/watch?v=0SzWrazgt7Y

You can also download a transcript for the video "Optimizing virtual teams."

As the video explained, virtual teams are comprised of individuals who work together but operate from different geographical locations. Technological advances have allowed companies to expand their workforce across the country and the globe. The 2017 Employee Benefits Report

published by the Society for Human Resource Management, reported that greater than 60% of companies offer telecommuting benefits. Technology allows people to work remotely for organizations around the world. There are a number of technological tools companies use in today's virtual workplace to promote teamwork, effective communication, and collaboration.

Video Conferences

Conference calls have been around for decades. Conference calls allow companies to host conversations with their business partners, clients, and coworkers. While conference calls are a great way to host meetings with people in multiple locations, they do not allow for face-to-face interactions. Video conference calls are able to connect people on the next level, providing a face-to-face meeting platform. Video conference calls have also reduced the need for expensive work trips which cuts travel expenses and travel time.

The Cloud

The Cloud is not a physical object but rather a term used to describe data centers that allow multiple users to access them via the internet. Cloud platforms like Google Drive, iCloud, OneDrive, Dropbox, etc. allow users to access shared documents and files from anywhere with internet access. These types of platforms promote and foster collaboration and teamwork.

Webinars

Webinars are similar to video conference calls but usually centered around a presentation or training event. Webinars allow the presenter to display their presentation while also interacting real-time with those in attendance. Webinars are a great tool for Human Resources Teams to use to conduct training events across the world. Instead of traveling from one location to the next, webinars allow HR teams to conduct onboarding and training events remotely.

Project Management Software

Project management software is an effective tool that managers use to keep track of their employees and projects. Project management software platforms help track project tasks and the progress of the employees completing the tasks. This type of software is extremely helpful, especially when managing a large, international team.

Technology continues to improve communication and accessibility across the globe. Companies that capitalize on technological advancements are able to build strong, international teams and remain competitive in their industries.

PRACTICE QUESTION

With the help of technology, business operations have drastically changed throughout the last century. Today, businesses can conduct meetings with clients and coworkers from around the world. Which of the following technological advances can companies use to host face-to-face meetings with international clients?

- Google Drive
- The Cloud
- Conference Calls
- Skype

Answer

Skype is a form of video conferencing that allows people to communicate face-to-face. Video conference calls are more personal as they allow people to put a name to a face and build stronger working relationships.

Translations

Language barriers can pose a big challenge when dealing with individuals from other countries. Providing translation services is a great way to ensure the message is being properly communicated. It is important to remember that certain slang terms and idioms may not translate well or make sense to other cultures. Working with a translator can help to bridge language barriers and form stronger working relationships. There are also text translating services that may be helpful when communicating via email or through similar messaging systems.

Efficient Communication

It is important to be respectful of other peoples' time. One should not call a meeting unless there is pertinent information to discuss. Any message should be geared towards the audience and relevant to their job or assignment. When a meeting is called, it should be accompanied by an agenda. Meeting agendas keep people on topic and help to ensure all important information is covered. Presenting information in smaller, bite-sized pieces is also more effective in helping the audience retain the information discussed. Infographics and visual tools are also helpful in presenting information to a large group. Even if people speak different languages, graphics and numbers are a universal form of communication.

Meeting Standards and Etiquette

Establishing meeting standards and etiquette is extremely helpful in maintaining a professional work environment. When working with people from across the globe, it is important to be mindful of time zones. Ideally, teams should work to find a time that is reasonable for all those attending. However, if it is impossible to find a reasonable time for everyone, it is a good idea to establish a rotation so no single person or team is expected to regularly work outside of their normal business hours.

Establishing etiquette expectations is a great way to maintain respect and professionalism. For example, large group meetings should be held through email, audio conference calls, or video conference calls. Sensitive information around pay and job performance should be discussed through more private communication platforms like one-on-one phone calls or video conferences.

PRACTICE QUESTION

Ralph is preparing for a big meeting with international clients. Ralph is worried that his clients may misinterpret his presentation since they do not speak English. What communication strategy can Ralph use to help ensure his meeting runs smoothly and his message is received as he intended?

- Conduct the meeting via email.
- Use lots of graphics and other visual aids.
- Enlist the help of a translator.
- Present a short and concise message.

Answer

Enlist the help of a translator. Hiring a translator to assist him during the meeting is a great way for Ralph to ensure both parties understand each other. A translator can help to navigate language barriers and form stronger working relationships.

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12.1.11: Putting It Together: Global Human Resources

Let's revisit LMN Hotels from the beginning of this module. After nine months of thoughtful recruiting, remodeling, and training, LMN Hotels has successfully opened the doors of their hotel chain expansion in Germany. Thanks to the innovative strategies implemented by LMN's HR Team, they were able to expand their company and create a new, dispersed, global business.

LMN's HR Team capitalized on the new talent pool and expanded their talent search into other European countries, looking for candidates who were bilingual in German and English. They were also able to conduct interviews through online platforms and utilize a combination of electronic training materials and on-the-job training to ensure the company's brand was relayed to and exemplified by employees. The HR Team carefully selected leadership candidates to oversee the remodel and grand openings of each hotel in Germany. These leaders were selected from the current LMN Hotels management team, to ensure each new hotel had someone with lots of experience and a true understanding of LMN's values and brand. LMN's HR Team will continue to focus on effective international communication strategies and fostering an inclusive international culture.

Expanding internationally is becoming the norm for a large number of companies. Human resource managers play a large role in day-to-day operations in domestic companies. From hiring, to training, to legal concerns, to employee morale and engagement, HR has a lot on their plates. Expanding internationally adds to their already full plate and provides additional challenges like language barriers, social distance, and cultural and legal differences. Understanding the opportunities and challenges the global business environment presents to the human resource team is the first step in successful implementation of international expansion.

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12.1.12: Discussion: Global Human Resources

This discussion can be found in Google Docs: Human Resources Management Discussion: Global Human Resources

To make your own copy to edit:

- **If you want a Google Doc:** in the file menu of the open document, click "Make a copy." This will give you your own Google Doc to work from.
- **If you want a PDF or Word file:** in the file menu of the open document, click "Download" and select the file type you would like to have (note: depending on the file type you select, the formatting could get jumbled).
- Instructions for faculty to paste the content into their LMS are located in the course resource pages.

With the advent of technology like email and video conferencing, the world has become very small. Global companies are not a new thing, but their employees' ability to converse and interact has increased a thousandfold. And that's a great thing! It also means that HR departments are getting more and more experience working within the labor laws and regulations of other countries and cultures.

Discussion Prompt

As an HR manager for a company that operates in global markets, you are being charged with arranging a contract employee in Italy. This person will perform landlord services for a couple of buildings your company owns. Review a few online sources and determine a list of things that you need to address when contracting with this employee. No need to dig deeply into Italian labor law (it's pretty extensive!). Then, review the lists and notes of two of your classmates.

Grading

Share your opinions below and respond to two of your classmates' thoughts.

Discussion Grading Rubric

Criteria	Not Evident	Developing	Exemplary	Points
Submit your initial response	**0 pts** No post made	**5 pts** Post is either late or off-topic	**10 pts** Post is made on time and is focused on the prompt	10 pts
Respond to at least two peers' presentations	**0 pts** No response to peers	**2 pts** Responded to only one peer	**5 pts** Responded to two peers	5 pts

Discussion Grading Rubric

Criteria	Not Evident	Developing	Exemplary	Points
			Total:	**15 pts**

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12.1.13: Assignment: Mastering Multiculturalism

This assignment can be found in Google Docs: Human Resources Management Assignment: Mastering Multiculturalism

To make your own copy to edit:

- **If you want a Google Doc**: in the file menu of the open document, click "Make a copy." This will give you your own Google Doc to work from.
- **If you want a PDF or Word file**: in the file menu of the open document, click "Download" and select the file type you would like to have (note: depending on the file type you select, the formatting could get jumbled).

Scenario

Expanding operations into an international market increases the complexity of HR management, introducing a range of legal and cultural and language issues. How can an organization evaluate and plan to overcome the HR challenges?

Your Task

In this rotation, you are reporting to the firm's Global HR lead. The team is developing a collateral piece that addresses the challenges and opportunities of doing business internationally. You have been assigned to contribute two points to that deliverable. In additional to reading this module, the lead has asked you to do some research on current international HR practices.

Your task is to prepare a 1–2 page paper that identifies two challenges to doing business internationally and how those challenges might be addressed. For each challenge, cite a Human Resource best practice—that is, an example of a practice that is particularly effective. The best practices you cite can be drawn from the readings or supplemental research.

Finding resources: You should find at least one article similar to Harvard Business Review's "L'Oreal Masters Multiculturalism" article.

Grading Rubric

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
Organization and format	**2 pts** Writing lacks logical organization. It may show some coherence but ideas lack unity. Serious errors and generally	**3 pts** Writing is coherent and logically organized, using a format suitable for the material	**4 pts** Writing is coherent and logically organized, using a format suitable for the material	**5 pts** Writing shows high degree of attention to details and presentation of points. Format used enhances	**5 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
	is an unorganized format and information.	presented. Some points may be contextually misplaced and/or stray from the topic. Transitions may be evident but not used throughout the essay. Organization and format used may detract from understanding the material presented.	presented. Transitions between ideas and paragraphs create coherence. Overall unity of ideas is supported by the format and organization of the material presented.	understanding of material presented. Unity clearly leads the reader to the writer's conclusion and the format and information could be used independently.	
Content	**8 pts** Some but not all required questions are addressed. Content and/or terminology is not properly used or referenced. Little or no original thought is present in the writing. Concepts presented are merely restated from the source, or ideas presented do not follow the logic and reasoning presented throughout the writing.	**12 pts** All required questions are addressed but may not be addressed with thoughtful consideration and/or may not reflect proper use of content terminology or additional original thought. Additional concepts may not be present and/or may not be properly cited sources.	**16 pts** All required questions are addressed with thoughtful consideration reflecting both proper use of content terminology and additional original thought. Some additional concepts may be presented from other properly cited sources, or originated by the author following logic and reasoning they've clearly presented throughout the writing.	**20 pts** All required questions are addressed with thoughtful in-depth consideration reflecting both proper use of content terminology and additional original thought. Additional concepts are clearly presented from properly cited sources, or originated by the author following logic and reasoning they've clearly presented	**20 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
				throughout the writing.	
Development—Critical Thinking	**8 pts** Shows some thinking and reasoning but most ideas are underdeveloped, unoriginal, and/or do not address the questions asked. Conclusions drawn may be unsupported, illogical or merely the author's opinion with no supporting evidence presented.	**12 pts** Content indicates thinking and reasoning applied with original thought on a few ideas, but may repeat information provided and/ or does not address all of the questions asked. The author presents no original ideas, or ideas do not follow clear logic and reasoning. The evidence presented may not support conclusions drawn.	**16 pts** Content indicates original thinking, cohesive conclusions, and developed ideas with sufficient and firm evidence. Clearly addresses all of the questions or requirements asked. The evidence presented supports conclusions drawn.	**20 pts** Content indicates synthesis of ideas, in-depth analysis and evidence beyond the questions or requirements asked. Original thought supports the topic, and is clearly a well-constructed response to the questions asked. The evidence presented makes a compelling case for any conclusions drawn.	**20 pts**
Grammar, Mechanics, Style	**2 pts** Writing contains many spelling, punctuation, and grammatical errors, making it difficult for the reader to follow ideas clearly. There may be sentence fragments and run-ons. The style of writing, tone, and use of rhetorical devices disrupts the	**3 pts** Some spelling, punctuation, and grammatical errors are present, interrupting the reader from following the ideas presented clearly. There may be sentence fragments and run-ons. The style	**4 pts** Writing is free of most spelling, punctuation, and grammatical errors, allowing the reader to follow ideas clearly. There are no sentence fragments and run-ons. The style of writing, tone, and use of	**5 pts** Writing is free of all spelling, punctuation, and grammatical errors and written in a style that enhances the reader's ability to follow ideas clearly. There are no sentence fragments and run-ons. The style	**5 pts**

Criteria	Inadequate (40%)	Minimal (60%)	Adequate (80%)	Exemplary (100%)	Total Points
	content. Additional information may be presented but in an unsuitable style, detracting from its understanding.	of writing, tone, and use of rhetorical devices may detract from the content. Additional information may be presented, but in a style of writing that does not support understanding of the content.	rhetorical devices enhance the content. Additional information is presented in a cohesive style that supports understanding of the content.	of writing, tone, and use of rhetorical devices enhance the content. Additional information is presented to encourage and enhance understanding of the content.	
				Total:	50 pts

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12.2: Video: Take “the Other” to Lunch

There's an angry divisive tension in the air that threatens to make modern politics impossible. Elizabeth Lesser explores the two sides of human nature within us (call them "the mystic" and "the warrior”) that can be harnessed to elevate the way we treat each other. She shares a simple way to begin real dialogue—by going to lunch with someone who doesn't agree with you, and asking them three questions to find out what's really in their hearts.

Take "the Other" to lunch | Elizabeth Lesser

https://www.youtube.com/watch?v=AsSd2nmoKNA

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12.3: Video: How Diversity Makes Teams More Innovative?

Are diverse companies really more innovative? Rocío Lorenzo and her team surveyed 171 companies to find out—and the answer was a clear yes. In a talk that will help you build a better, more robust company, Lorenzo dives into the data and explains how your company can start producing fresher, more creative ideas by treating diversity as a competitive advantage.

https://www.youtube.com/watch?v=lPtPG2lAmm4

12.3: Video: How Diversity Makes Teams More Innovative? is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

12.4: Case Study: EEOC Settles Suit Against Salomon Smith Barney For Race and National Origin Bias

African-American, Haitian, Nigerian, and West Indian Workers To Receive $635,000

NEW YORK -- The U.S. Equal Employment Opportunity Commission (EEOC) today announced a $635,000 settlement of an employment discrimination lawsuit against Salomon Smith Barney (Salomon), a subsidiary of Citigroup and the nation's second-largest retail brokerage firm. The suit, filed under Title VII of the Civil Rights Act of 1964, was brought by EEOC on behalf of 13 current or former employees of Salomon's Greenwich Street Data Center who were subjected to disparate treatment and harassment based on their race and/or national origin.

The suit, filed in September 2000, alleged that Salomon discriminated against five charging parties employed as computer operators due to their race and nationality African-American, Haitian, Nigerian, and West Indian as well as a class of other similarly-situated employees by subjecting them to repeated and offensive comments that created a hostile work environment. The suit also charged the global financial firm with paying the class of workers disparate wages, denying them salary increases, promotions, and equal opportunities for promotion because of their race and/or countries of origin.

"As the nation becomes increasingly diverse, it is in employers' best interest to provide equal opportunities to all workers, regardless of their race or national origin, in order to attain and retain the best possible talent," said Commission Chairwoman Ida L. Castro. "This case should remind every employer from Wall Street to Main Street that targeting groups of workers for discrimination not only violates the law, it also damages the corporate culture and hurts the bottom line by decreasing productivity and morale."

The settlement was approved late Friday, June 13, as a Consent Decree by the U.S. District Court for the Southern District of New York. In addition to the $635,000 in monetary payments to the victims, Salomon agreed to take major steps to enhance the promotional opportunities of four charging parties who are still employed as computer operators and to develop specific criteria for the promotion of computer operators in the Data Center. Additionally, the Consent Decree requires that Salomon:

- Continue to maintain a policy prohibiting discrimination in the workplace and a procedure for employees to report complaints of discrimination;
- Post a notice of its policies, practices, and intent not to discriminate against employees;
- Provide all managers and supervisors in the Data Center with equal employment opportunity training; and
- Provide written reports to the EEOC about its training efforts in the Data Center.

"We are pleased that Salomon Smith Barney worked cooperatively with the Commission to settle these claims quickly after the lawsuit was filed," said Katherine Bissell, regional attorney of EEOC's New York District Office, which handled the case. "This settlement is significant not only in terms of monetary benefits and the message it sends to the securities industry, but also in

terms of the comprehensive injunctive relief that will ensure future equal employment opportunities at Salomon."

In addition to enforcing Title VII, which prohibits employment discrimination based on race, color, religion, sex, and national origin, EEOC enforces the Age Discrimination in Employment Act; the Equal Pay Act; Titles I of the Americans with Disabilities Act, which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; prohibitions against discrimination affecting individuals with disabilities in the federal government; and sections of the Civil Rights Act of 1991. Further information about the Commission is available on the agency's website at www.eeoc.gov.

12.4: Case Study: EEOC Settles Suit Against Salomon Smith Barney For Race and National Origin Bias is shared under a not declared license and was authored, remixed, and/or curated by LibreTexts.

12.5: Case Study: Merrill Lynch To Pay $1.55 Million For Job Bias Against Iranian Muslim Former Employee

EEOC Settles Suit for Discrimination Based on Religion and National Origin

NEW YORK – The U.S. Equal Employment Opportunity Commission (EEOC) today announced that Merrill Lynch, the international financial services firm, has agreed to pay $1,550,000 to settle a discrimination lawsuit under Title VII of the Civil Rights Act on behalf of an Iranian Muslim former worker who was fired due to his religion and national origin.

The EEOC's lawsuit, in the U.S. District Court for the Southern District of New York (Case No. 07-CV-6017), alleged that Merrill Lynch refused to promote and terminated Majid Borumand from a position as a quantitative analyst in August 2005 because of his Iranian national origin and Muslim religion. Merrill Lynch instead retained and promoted a less qualified individual, the EEOC asserted in the lawsuit.

"Employers need to be vigilant in guarding against discrimination based on religion or national origin, especially as our nation's labor force becomes increasingly more diverse," said EEOC New York District Director Spencer H. Lewis. "All individuals deserve the freedom to compete on a fair and level playing field, which did not occur in this case."

According to the consent decree settling the litigation, in addition to the monetary relief for Borumand, Merrill Lynch will provide training to its employees regarding discrimination based on religion and national origin. In addition, the decree states that Merrill Lynch will not discriminate against employees because of their national origin or religion, and will not retaliate against employees who oppose discrimination. The decree also calls for monitoring by the EEOC to ensure compliance.

EEOC Senior Trial Attorney Michael J. O'Brien said, "We are pleased with the resolution of this case, not only in terms of the significant monetary benefits, but also for the injunctive relief which will help foster a discrimination-free workplace."

The EEOC enforces federal laws prohibiting employment discrimination. Further information about the EEOC is available on its website at www.eeoc.gov.

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12.6: Case Study: Central Station Casino To Pay $1.5 Million In EEOC Settlement For National Origin Bias Suit

Hispanic Employees Verbally Harassed, Subjected to Speak-English-Only Rules

The U.S. Equal Employment Opportunity Commission (EEOC) today announced the settlement of a national origin discrimination lawsuit under Title VII of the 1964 Civil Rights Act against Anchor Coin, doing business as Colorado Central Station Casino, Inc. (CCSC), for $1.5 million and other relief on behalf of a class of Hispanic employees of the housekeeping department who were verbally harassed and subjected to unlawful English-only rules.

In addition to the monetary relief for Debra Castillo, Maria Fernandez, Antonio Montoya, Sharon Chavez, Humberto Moreno, and other similarly situated Hispanic workers, CSSC will notify all its employees that it has no blanket English-only policy and provide training to ensure that discrimination does not occur. The suit was filed by EEOC in March 2001 in the U.S. District Court for the District of Colorado after EEOC investigated the case, found that discrimination occurred, and its conciliation efforts to reach a voluntary settlement proved futile. The suit was later joined by private plaintiff interveners. Selena Solis, of the Mexican American Legal Defense and Educational Fund (MALDEF), and David Fine, of Kelly Haglund Garnsey & Kahn, LLC co-counseled the case with Kimberlie Ryan and the EEOC.

"This settlement should send a strong message to employers in Colorado and across the country that we expect companies to think long and hard before implementing rules that may discriminate against those who speak languages other than English," said Francisco J. Flores, Jr., Director of the EEOC's Denver District Office. "This settlement is an important step in our efforts to eradicate national origin discrimination, which is a persistent problem in the workplace."

Kimberlie Ryan, attorney for all the plaintiff-interveners, said: "This case wasn't about what language workers should speak. It was about the promise of equality. Our clients faced great odds in speaking up for the rights of all to work in peace and to be free of discrimination."

In this case, the evidence showed that in 1998, the Human Resources Director instructed the Chief of Engineering, the Housekeeping Manager, and other housekeeping supervisors to implement a blanket English-only language policy in the housekeeping department despite their objections. Moreover, the Human Resources Director instructed them to discipline any housekeeping employee who violated the policy. The housekeeping department had the highest concentration of Hispanic employees. Although some employees on the housekeeping staff were bilingual, others employees were monolingual Spanish speakers.

The reason given for implementing the restrictive language policy was that a non-Spanish-speaking employee thought that other employees were talking about her in Spanish, and that CCSC needed the policy in defense for undefined "safety reasons." Pursuant to the policy, management told the housekeeping staff that English was the official language of the casino and that Spanish could no longer be spoken. According to the litigation, the Chief Engineer and Housekeeping Manager chastised employees for speaking Spanish at any time, saying, "English-English-English," or "English-only." Moreover, higher-level managers or other non-Hispanic

employees would shout "English, English" at the Hispanic employees when encountering them in the halls, resulting in the Hispanic employees being embarrassed and suffering emotional distress.

Selena N. Solis, Staff Attorney for MALDEF, said: "This monetary settlement sends out a clear message to employers: Workplace discrimination on the basis of language will not be tolerated in this day and age, especially when the current workforce population is increasingly comprised of multi-lingual workers."

In the course of the litigation, CCSC's claim of a "business necessity" basis for its misguided and discriminatory language policies was eroded by its own management witnesses who referred to the unlawful policy as unnecessary, wrong, and "stupid." At least one management witness testified that in his opinion the language policy arose out of the Human Resources Director's insecurity, anger, and hurt feelings stemming from her perception that housekeeping employees were speaking about her in Spanish. As part of the settlement, CCSC denies all allegations contained in the suit.

EEOC's policy on English-only rules is set out in its Guidelines on Discrimination Because of National Origin (Part 29, Code of Federal Regulations, Section 1606.1). It is the Commission's position that rules requiring employees to speak only English in the workplace at any time may have an adverse impact on individuals whose primary language is not English or who are limited in English proficiency. Such English-only rules, when applied at all times, may violate Title VII on the basis of national origin.

National origin discrimination is one of the fastest-growing types of charge filings with EEOC nationwide, increasing 28% since the mid-1990s, from 7,035 filings in Fiscal Year 1995 to 9,046 in FY 2002. National origin filings based on English-only rules have skyrocketed by more than 600% from 32 filings in FY 1996 (when EEOC began separately tracking them) to 228 filings in FY 2002.

In addition to enforcing Title VII, the EEOC enforces the Age Discrimination in Employment Act, which protects workers age 40 years and older from discrimination based on age; the Equal Pay Act; Title I of the Americans with Disabilities Act, which prohibits employment discrimination against people with disabilities in the private sector and state and local governments; prohibitions against discrimination affecting individuals with disabilities in the federal government; and sections of the Civil Rights Act of 1991. Further information about the Commission is available on its website at www.eeoc.gov.

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